



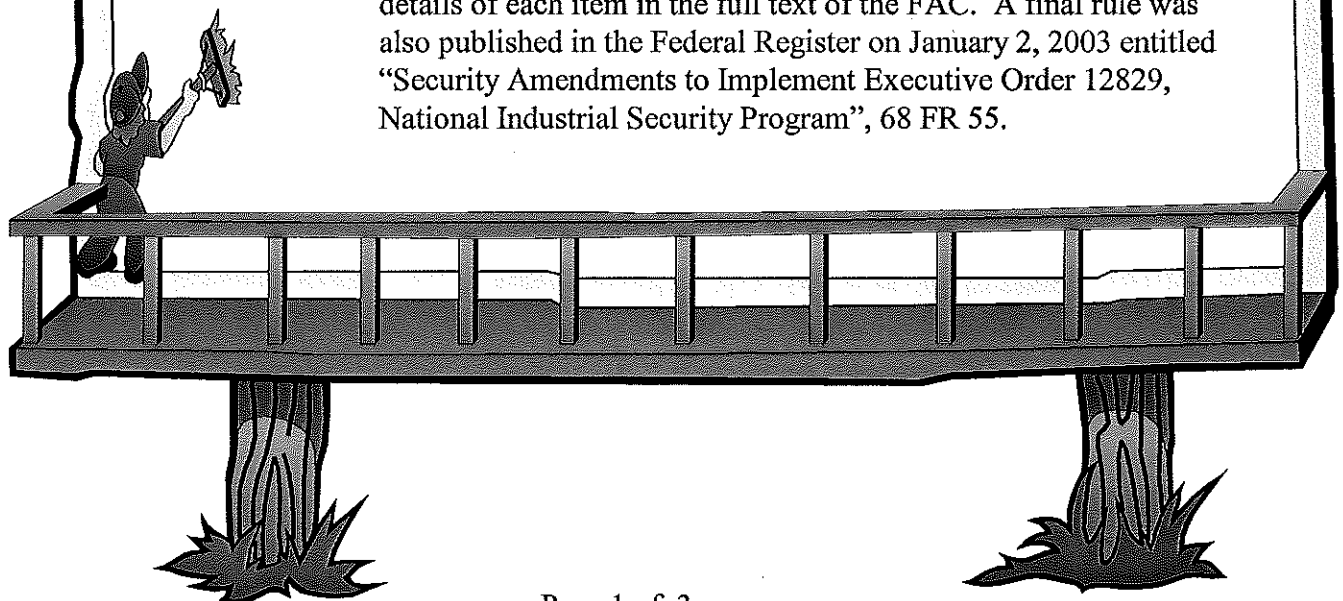
Headquarters Policy Flash

FLASH 2003-01

DATE: January 6, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: ☐ Federal Acquisition Circular (FAC) 2001-11
☐ Final Rule (Federal Register Vol. 68, Pg. 55)) - Security
Amendments to Implement Executive Order 12829,
National Industrial Security Program

SUMMARY: On December 31, 2002, FAC 2001-11 was published in the Federal Register at 67 FR 80320. Contracting personnel should review the details of each item in the full text of the FAC. A final rule was also published in the Federal Register on January 2, 2003 entitled "Security Amendments to Implement Executive Order 12829, National Industrial Security Program", 68 FR 55.



Flash 2003-01
(January 6, 2003)

Federal Acquisition Circular (FAC) 2001-11

The following two items are in FAC 2001-11, which was published in the Federal Register on December 31, 2002, at 67 FR 80320. *The effective date for each item is January 1, 2003.* The FAC is available via the internet at <http://www.arnet.gov/far/facsframe.html>

1. Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 2002-028)

This final rule amends FAR Subpart 13.5, Test Program for Certain Commercial Items, to extend the expiration date to January 1, 2004, of the test program for special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold but not exceeding \$5,000,000.

2. Section 508 Micro-Purchase Exception Sunset Provision (FAR Case 2002-012)

This is an interim rule extending the Electronic and Information Technology (Section 508) micro-purchase exception from January 1, 2003 to October 1, 2004. FAR 39.204, Exceptions, provides an exclusion to micro-purchase acquisitions for Electronic and Information Technology (EIT). It is expected that within above mentioned timeframe products conforming to the EIT standards would be marketed and labeled by the manufacturer. Currently, Industry is providing products at varying levels of conformance to the standards, and product packaging does not adhere to section 508 information in most cases.

Questions concerning this FAC should be directed to Denise Wright at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov

Final Rule (Federal Register Vol. 68, Pg. 55)

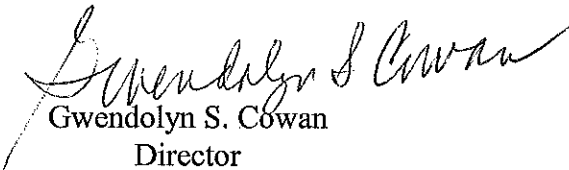
1. Security Amendments to Implement Executive Order 12829, National Industrial Security Program

The Order established a single, uniform, industrial security program for the nation. This rule finalized an interim rule published March 28, 2002, 67 FR 14873.

FLASH 2003-01
(January 6, 2003)

No practical changes is required at this time as the previous Acquisition Letters 97-03 and 98-02 were cancelled and the DEAR was updated based on the interim final rule.

Questions concerning this Rule should be directed to Richard Langston at (202) 586-8247 or via e-mail at richard.langston@pr.doe.gov



Gwendolyn S. Cowan
Director

cc:
PPAG Members



Federal Register

Tuesday,
December 31, 2002

Part V

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Chapter 1
Federal Acquisition Regulations; Final
Rules

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 2001-11;
Introduction**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001-11. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001-11 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Special Simplified Procedures For Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold.	2002-028	Moss
II	Section 508 Micro-purchase Exception Sunset Provision	2002-012	Nelson.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001-11 amends the FAR as specified below:

Item I—Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 2002-028)

This final rule amends FAR Subpart 13.5 to extend the expiration date of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold but not exceeding \$5,000,000 to January 1, 2004. This change implements Section 812 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 812 amended Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Public Law 104-106; 110 Stat. 654; 10 U.S.C. 2304 note).

Item II—Section 508 Micro-Purchase Exception Sunset Provision (FAR Case 2002-012)

This interim rule extends the Electronic and Information Technology (Section 508) micro-purchase exception to October 1, 2004. This rule is of special interest to contracting officers and other individuals designated in accordance with FAR 1.603-3.

Dated: December 20, 2002.

Jeremy F. Olson,
Acting Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-11 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001-11 are effective January 1, 2003.

Dated: December 20, 2002.

Deidre A. Lee,
Director, Defense Procurement and Acquisition Policy.

Dated: December 19, 2002.

David A. Drabkin,
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: December 19, 2002.

Tom Luedtke,
Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02-32741 Filed 12-30-02; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 13**

[FAC 2001-11; FAR Case 2002-028; Item I]

RIN 9000-AJ52

**Federal Acquisition Regulation;
Special Simplified Procedures for
Purchases of Commercial Items in
Excess of the Simplified Acquisition
Threshold**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 812 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 812 extends the test of the special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000, until January 1, 2004.

DATES: *Effective Date:* January 1, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to

status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 2001-11, FAR case 2002-028.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 13.5 to implement Section 812 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 812 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend through January 1, 2004, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 13 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-11, FAR case 2002-028), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 13

Government procurement.

Dated: December 20, 2002.

Jeremy F. Olson,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

1. The authority citation for 48 CFR part 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

13.500 [Amended]

2. Amend section 13.500 by removing from the first sentence of paragraph (d) "January 1, 2003" and adding "January 1, 2004" in its place.

[FR Doc. 02-32742 Filed 12-30-02; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 2001-11; FAR Case 2002-012; Item II]

RIN 9000-AJ53

Federal Acquisition Regulation; Section 508 Micro-Purchase Exception Sunset Provision

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to extend the electronic and information technology (Section 508) micro-purchase exception to October 1, 2004.

DATES: *Effective Date:* January 1, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before March 3, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2002-012@gsa.gov.

Please submit comments only and cite FAC 2001-11, FAR case 2002-012, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. The TTY Federal Relay Number for further

information is 1-800-877-8973. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900, or Ms. Angelena Moy, Case Manager, at (703) 602-1302. Please cite FAC 2001-11, FAR case 2002-012.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule extends the electronic and information technology (EIT) micro-purchase exception until October 1, 2004. Previously, in incorporating the Access Board standards, the FAR provided an exception from the procurement regulations for micro-purchases until January 1, 2003. The Councils fully expected that many products would conform to the standards within that timeframe and be marketed and labeled by the manufacturer accordingly. However, industry is providing products at varying levels of conformance to the standards, and product packaging does not currently provide Section 508 conformance information, in most cases.

The Government is continuing to make compliance a high priority, and the award of many Federal EIT procurements have hinged on accessibility. While the "Buy Accessible" information on the Section508.gov Web site is helpful, not all firms have templates completed for their products making it especially difficult for Government purchase cardholders who are not contracting officers to make informed EIT purchases through reasonable effort.

Typically, Government personnel who are not warranted contracting officers use the purchase card to purchase commercial-off-the-shelf items. Use of the purchase card makes it generally impractical to comply with the EIT accessibility standards unless commercial-off-the-shelf products are labeled for Section 508 standards compliance. The Councils recognize the fact that almost all micro-purchases are made using the Governmentwide commercial purchase cards, but also recognize that the Government purchases \$52 billion per year for EIT products and services, of which only a very small percentage are acquired through the micro-purchase process with credit cards. Most Government desktop personal computers and other infrastructure are purchased and controlled through large agency acquisitions.

By October 1, 2004, we are hopeful that vendors will provide statements related to product conformance to the Section 508 standards as part of their marketing information and their other

packaging labeling. As this occurs, Federal Government cardholders can make informed EIT purchases that conform to the Access Board's standards, and the micro-purchase exception will no longer be needed.

Without the extension of the micro-purchase exception, all micro-purchases may have to go through a special evaluation to ensure they comply with EIT Standards. EIT micro-purchases would be forwarded to contracting offices for purchase. This would significantly increase the workload in procurement offices and the finance offices, causing a reduction in efficiency and delivery (increased procurement lead-times). The potential costs to industry cannot be measured.

The Councils realized there might be some concern within the disability advocacy groups and the Government that extending the micro-purchase exemption will signal that the Government is relaxing the implementation period. That is not the case. It is only intended to deal with the small portion of EIT that is acquired with credit cards (micro-purchases) and the practical reality that the lack of package labeling, or other manufacturer accessibility information, makes informed decision making by cardholders especially difficult. To help in determining the appropriate next steps for addressing the accessibility of EIT micro-purchases, the Councils invite respondents to address the following questions in addition to providing comments on the rule.

Any and all comments related to this rule are welcomed. Note that public comments provided in response to this notice will be available in their entirety to any requester, including any requester under the Freedom of Information Act (5 U.S.C. 552). Therefore, we caution respondents not to provide proprietary or other business sensitive information. Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.

1. For EIT industry respondents, please include in your comments responses to the following questions:

a. What type of training is your company employing to educate your developers (hardware and software) and salespersons regarding the section 508 requirements?

b. What mechanisms or approaches should the Government consider to ensure EIT micro-purchases (products and services) are accessible?

c. Do you anticipate your company will label its EIT products with buyer information regarding the accessibility

aspects of the product being offered for sale? If so, when?

d. Do you offer a complete template of accessibility information for each of your EIT products and services on your Web site? If no, why not?

e. Currently, what process does your company employ to provide information to potential Government purchasers regarding the accessibility features of the products manufactured or sold?

2. For other respondents, please include in your comments responses to the following questions:

a. What mechanisms or approaches should the Government consider to ensure EIT micro-purchases (products and services) are accessible?

b. Currently, what type of training is being employed by your organization to educate purchasers and users regarding the Section 508 requirements? Is any training specifically geared towards cardholders and micro-purchases? If so, how do you explain and communicate the Section 508 requirements?

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because for purchases under \$2,500 (a "micro-purchase"), no competitive quotations have to be obtained and micro-purchases are no longer reserved exclusively for small firms. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-11, FAR case 2002-012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General

Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule extends an exception that would otherwise impose burdens that the Government and contractors are not prepared to meet. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: December 20, 2002.

Jeremy F. Olson,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 39 as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR part 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

39.204 [Amended]

2. Amend section 39.204 in the first sentence of paragraph (a) by removing "January 1, 2003" and adding "October 1, 2004" in its place.

[FR Doc. 02-32743 Filed 12-30-02; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2001-11 which amend the FAR. An asterisk (*) next to a rule indicates that

a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001-11 which precedes this document. These

documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001-11

Item	Subject	FAR Case	Analyst
I	Special Simplified Procedures For Purchases Of Commercial Items in Excess of the Simplified Acquisition Threshold.	2002-028	Moss.
II	Section 508 Micro-purchase Exception Sunset Provision	2002-012	Nelson.

Item I—Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 2002-028)

This final rule amends FAR Subpart 13.5 to extend the expiration date of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold but not exceeding \$5,000,000 to January 1, 2004. This change implements Section 812 of the National

Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 812 amended Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Public Law 104-106; 110 Stat. 654; 10 U.S.C. 2304 note).

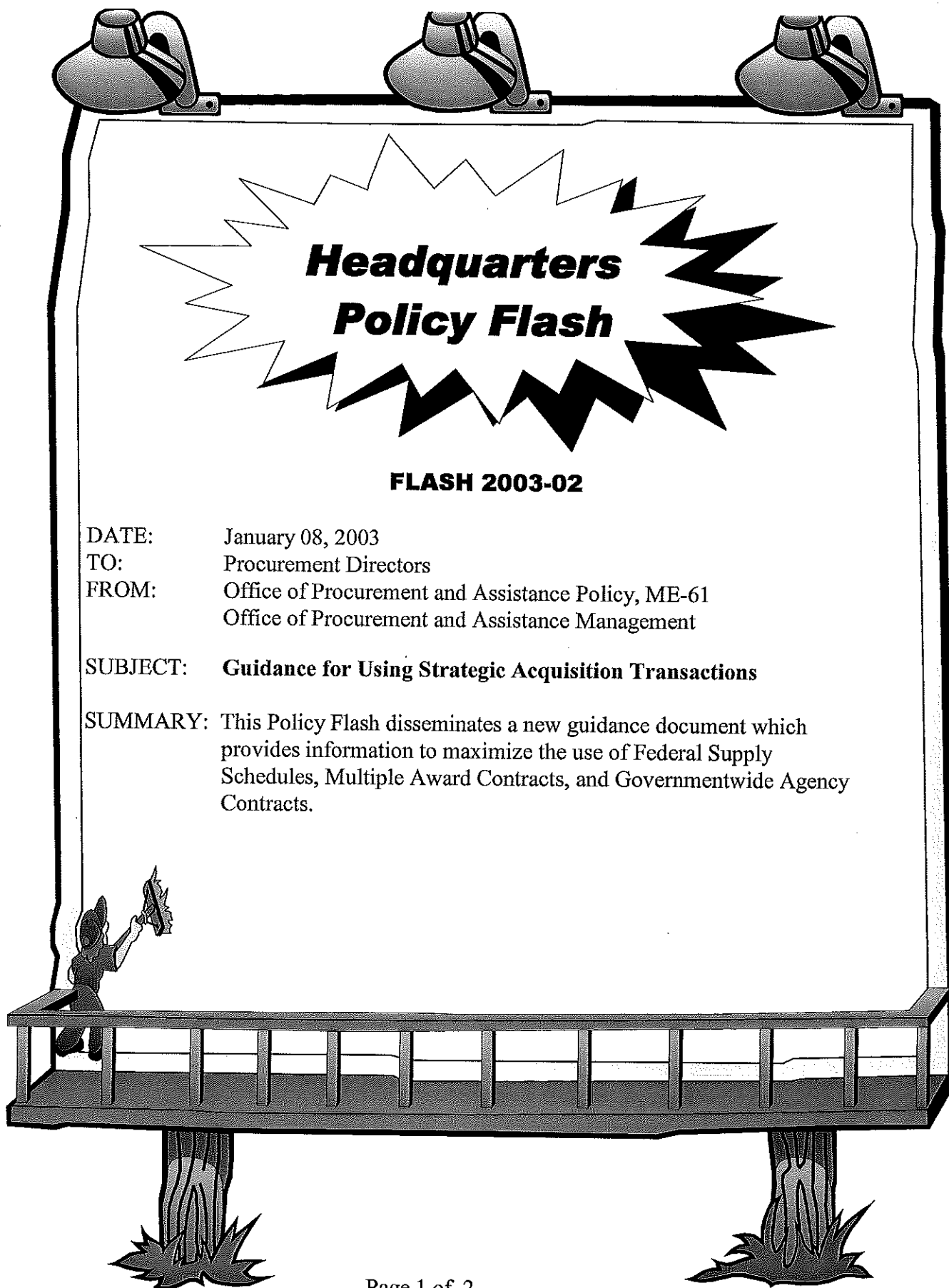
Item II—Section 508 Micro-purchase Exception Sunset Provision (FAR Case 2002-012)

This interim rule extends the Electronic and Information Technology

(Section 508) micro-purchase exception to October 1, 2004. This rule is of special interest to contracting officers and other individuals designated in accordance with FAR 1.603-3.

Dated: December 20, 2002.

Jeremy F. Olson,
Acting Director, Acquisition Policy Division,
[FR Doc. 02-32740 Filed 12-30-02; 8:45 am]
BILLING CODE 6820-EP-P




Flash 2003-02
January 8, 2003

Changes in the acquisition environment have resulted in the introduction of new and innovative methodologies that provide procurement professionals unprecedented flexibility in how goods and services are acquired. The Office of Headquarters Procurement Services, Office of Procurement and Assistance Management recently developed the attached guide to assist their acquisition professionals and clients in indentifying, analyzing, and choosing among available alternatives. The guide also highlights lessons learned and provides information on best practices, intended to ensure a level of uniformity and consistency in application. This guide is provided for your use as appropriate.

As you know, we currently have an active Acquisition Letter 2000-07 which covers the same subject matter, however, it is not as comprehensive as the guide attached to this flash. Based on additional review and comment, we would like to cancel AL 2002-07 and add the attached guide as a new chapter in the DOE Acquisition Guide in the near future. We welcome your comments/suggestions.

Questions concerning the Strategic Acquisition Transactions Guide should be addressed to John Bashista at (202) 287-1500 or via e-mail at john.bashista@hq.doe.gov

Questions concerning this Policy Flash or the proposed new Acquisition Guide Subchapter should be addressed to Michael Fischetti at (202) 586-8192 or via e-mail at Michael.Fischetti@pr.doe.gov


Gwendolyn S. Cowan
Director

cc:
PPAG Members



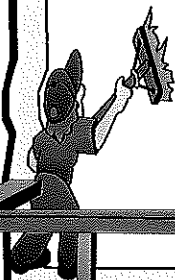
Headquarters Policy Flash

FLASH 2003-03

DATE: January 14, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Management and Operating (M&O) Contractor Standard Research Subcontract (Educational Institutions or Nonprofit Organizations)

SUMMARY: This Policy Flash disseminates a standard research subcontract for use by Department of Energy (DOE)/National Nuclear Security Administration (NNSA) M&O contractors in subcontracting for unclassified research and development work and a December 30, 2002 memorandum entitled "Standard Research Subcontract (Educational Institution or Nonprofit Organization)" from the DOE and NNSA Directors, Office of Procurement and Assistance Management.

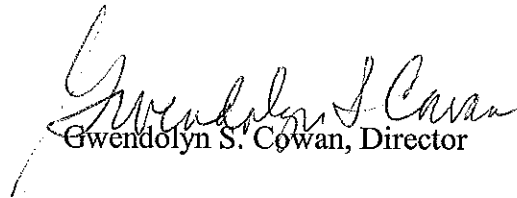


FLASH 2003-03
January 14, 2003

The memorandum encourages M&O contractors to use the standard subcontract for unclassified research and development, unless the requirement involves nuclear technology, on-site activity, work related to the operations of the facility, or a programmatic requirement for "open source" software distributions. In those cases, the model will have to be tailored to address those specific requirements.

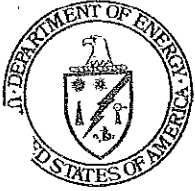
The Integrated Contractor Purchasing Team (ICPT) championed this effort. An ICPT representative worked with representatives from the Federal Demonstration Partnership (i.e., universities), DOE, and NNSA to develop the attached standard research subcontract. We believe that standardization of such subcontracts will greatly benefit the DOE/NNSA complex and the university research community and request your support of its use.

Questions related to the standard research subcontract should be directed to Trudy Wood at (202) 586-5625 or via e-mail at trudy.wood@pr.doe.gov



Gwendolyn S. Cowan, Director

cc:
PPAG Members



Department of Energy

Washington, DC 20585

December 30, 2002

MEMORANDUM FOR FEDERAL AND M&O CONTRACTOR PROCUREMENT DIRECTORS

FROM:

RICHARD H. HOPF

DIRECTOR, OFFICE OF PROCUREMENT AND
ASSISTANCE MANAGEMENT/OMBE

ROBERT C. BRADEN, JR.

DIRECTOR, OFFICE OF PROCUREMENT
AND ASSISTANCE MANAGEMENT
NATIONAL NUCLEAR SECURITY
ADMINISTRATION

SUBJECT:

STANDARD RESEARCH SUBCONTRACT (EDUCATIONAL
INSTITUTION OR NONPROFIT ORGANIZATION)

Several months ago, this office was contacted by the Department's representative to the Federal Demonstration Partnership (FDP) and was asked to assist in addressing long-standing issues relating to the subcontracts between Department of Energy (DOE)/National Nuclear Security Administration (NNSA) management and operating (M&O) contractors and educational or nonprofit organizations for unclassified work. These issues included the use of non-standard terms and conditions that often delay negotiations and subcontract execution, non-standard requirements for the amount of support documentation required to process payments, and non-applicability of some clause flowdowns to nonprofit institutions. In addition, subcontracts from DOE/NNSA M&O contractors range in size from a few pages to more than 70 pages in length further complicating and increasing the cost of subcontract administration by all concerned. After our review of this situation, we came to the conclusion that some standardization of such subcontracts could and should be made.

Accordingly, we requested the Integrated Contractor Purchasing Team (ICPT) to champion efforts to develop a standard research subcontract that could be employed by all DOE/NNSA M&O contractors in subcontracting for unclassified research and development work. The ICPT had previously coordinated standard terms and conditions for use with the now widely employed ICPT agreements. The ICPT Chairperson, in turn, identified an individual to work with the FDP Contract Task Force and DOE/NNSA contractor representatives in developing a model standard subcontract. Meetings and telecons between the two groups over the past year have led to the enclosed product. Federal HQ, field, and contractor personnel provided feedback on this model, and their comments have been considered in its finalization.



Likewise, it has been coordinated with appropriate members of our staffs and with Counsel. We consider the enclosed standard subcontract to be appropriate for immediate use by all DOE/NNSA M&O contractors and encourage its employment for unclassified research and development work. We understand that, if the proposed work involves nuclear technology, classified work, on-site activity, work related to the operation of the facility, or a programmatic requirement for "open source" software distribution, the model will have to be tailored to address these specific requirements.

We are requesting your support for using this model complex-wide. If your Prime Contract appears to contain provisions that create barriers to using this subcontract, your respective Contracting Officer should contact Trudy Wood at (202) 586-5625 to discuss those concerns.

**STANDARD RESEARCH
SUBCONTRACT (EDUCATIONAL
INSTITUTION or NONPROFIT ORGAN.)**

[FOR UNCLASSIFIED WORK]

NO. _____

(DEPARTMENT OF ENERGY M&O CONTRACTOR)

NAME _____

ADDRESS _____

Subcontractor:

Attention:

Address

City, State, Zip

Phone:

Fax:

E-Mail:

**Contractor's Procurement Representative
[Contract Administrator]:**

Proc. Rep Title: _____

Phone #: (_____)

Fax #: (_____)

E-Mail: _____

Introduction

This is a cost-reimbursement, no-fee, standard subcontract for unclassified research and development work between **[Insert contractor's name]** a constitutional corporation of the State of _____, (hereinafter "**Contractor**") and **[Insert subcontractor's name]** (hereinafter "**Subcontractor**"). This Subcontract is issued under Prime Contract No. **[Insert contract no.]** between the **Contractor** and the United States of America (hereinafter "the Government"), acting by and through the United States Department of Energy (hereinafter "DOE") **[include the following phrase in weapons lab contracts-- and the National Nuclear Security Agency (hereinafter "NNSA"))]** for the management and operation of **[insert name of the DOE facility]** (hereinafter "DOE Facility").

Agreement

The parties agree to perform their respective obligations in accordance with the terms and conditions of the Schedule and the General Provisions and other documents attached or incorporated by reference, which together constitute the entire Subcontract and supercedes all prior discussions, negotiations, representations, and agreements.

[SUBCONTRACTOR NAME]

[M&O CONTRACTOR NAME]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

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GENERAL PROVISIONS

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SCHEDULE OF ARTICLES

1. Statement of Work

The Subcontractor shall perform certain research and development work identified as **[insert brief title or statement of research]** and more fully described in the *Statement of Work* Attachment to this Subcontract. **[or Appendix I.]**

The Subcontractor's Principal Investigator assigned to this work is **[insert Principal Investigator's name]**. The Principal Investigator shall not be replaced or reassigned without the advance written approval of the Contractor's Procurement Representative **[or Contract Administrator]**.

The Subcontractor shall submit three copies of the final and any intermediate reports to the Contractor's Procurement Representative **[or Contract Administrator, Contractor's Technical Representative, or named individual]** upon completion of the work and, when the Subcontract contains milestone requirements, on the indicated milestone dates. When requested by the Contractor's Technical Representative, the Subcontractor shall submit a draft copy of the final report for review prior to finalization. The Contractor's Technical Representative need not approve the Subcontractor's reported conclusions of the research.

2. Report Preparation Requirements

- a. These instructions apply to all formal reports, including the final report, required by the Subcontract. It does not apply to letter reports or reports specifically identified as Milestones in *Article 3. Period of Performance* in this Subcontract as informal reports.
- b. The final report shall contain a comprehensive summary of all work results and conclusions. All reports shall fairly and completely describe the efforts applied to and the results obtained toward achievement of objectives of the subcontract work. If an objective is not accomplished, such failure shall be fully documented and explained in the report.
- c. Reports shall include the following elements: (a) a brief abstract of the report which describes the overall objectives and results; (b) a full statement of each objective and description of the effort performed and the accomplishments achieved; (c) a list of any publication or information release made of material developed or maintained through the performance of the subcontract; and (d) any other relevant information.

3. Period of Performance

The work described in Article 1, Statement of Work, shall commence upon signature of this Subcontract by both parties and shall be completed on or before **(insert end date)**

[OR, if there is a milestone schedule, add: in accordance with the following milestones:

Milestone	Completion Date]
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4. Costs and Payments

- a. The estimated cost of the work called for in this Subcontract is \$_____, and is based upon the following estimated levels of effort necessary to perform the Subcontract work:

Category	No. of Staff	No. of Months
----------	--------------	---------------

[OR:] is based on the Subcontractor's Cost Proposal Attachment [or Appendix II] to this Subcontract.

- b. [Check provision below that applies OR include only applicable provision]

_____ This Subcontract is fully-funded and is subject to the *Limitation of Costs* clause of the General Provisions.

_____ This Subcontract is incrementally funded and is subject to the *Limitation of Funds* clause of the General Provisions. The funding amount currently allotted to this Subcontract is \$_____ and covers [describe what work the incremental funding covers.]

- c. The Contractor will pay the Subcontractor for performance of this Subcontract, unless excluded or limited by other provisions of this Subcontract, the allowable direct costs incident to performance, plus the allocable portion of the allowable indirect costs of the Subcontractor. Allowable and allocable costs shall be determined in accordance with the cost principles of the Allowable Cost and Payment clause of the General Provisions as amended by the Subcontract to incorporate the costs principles of Subpart 31.3 of the Federal Acquisition Regulation, which in turn, incorporates the cost principles of Office of Management and Budget Circular A-21.

5. Invoices for Payment

- a. Payments for Subcontract work shall be made monthly based on invoices submitted by the Subcontractor for work performed. Invoices shall bear the following certification signed by a responsible official of the Subcontractor:

"The undersigned certifies that the information set forth herein is true and correct and may be used as a basis for payment for work

- b. Invoices shall be mailed to: (Insert address)
-

- c. Payments shall be mailed to: **(insert address)**
- d. The Contractor will use its best efforts to process invoices for payment within 30 days of receipt; provided, however, that payments made more than 30 days after receipt of an invoice shall not be subject to penalty, interest, or late charges.
- e. Invoices, which include the cost of property acquired by the Subcontractor at a cost of \$5,000 or more, shall include a description of the property and shall identify the assigned property number; the manufacturer; the Serial number and model number; the acquisition date; the unit price, quantity, and total cost of the property; and the location of the property.

6. Contractor-Furnished and Subcontract-Acquired Property

- a. The Contractor shall furnish the Subcontractor the materials, equipment, and supplies listed in *Contractor-Furnished Government Property* [OR Appendix III] to this Subcontract.
- b. Purchase of equipment or other tangible personal property, which is not identified in the Subcontractor's approved budget for this Subcontract and for which the Subcontractor is entitled to be reimbursed as a direct item of cost under this Subcontract, shall be approved in advance by the Contractor's Procurement Representative [OR Contract Administrator].
- c. All property furnished by the Contractor or acquired by the Subcontractor, as a direct cost under the Subcontract, title to which vests in the Government, shall be identified, controlled, and protected as required by the *Government Property* clause of the General Provisions of this Subcontract. Disposition of such property upon completion of this Subcontract shall be as directed by the Contractor's Procurement Representative [OR Contract Administrator].
- d. Title to all high-risk property, regardless of dollar value, vests in the Government. The Subcontractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property in accordance with the policies, practices and procedures for property management contained in the DOE Property Management regulations (41 CFR 101-1.53)

High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property, as defined in 41 CFR 1.100-51, includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

7. Subcontract Administration

- a. The Contractor's Procurement Representative [OR Contract Administrator] for this Subcontract is [insert name of PR/CA]. The Procurement Representative [OR Contract Administrator] is the only person authorized to make changes in the requirements of this Subcontract or make modifications to this Subcontract, including changes or modifications to the Statement of Work and the Schedule. The Subcontractor shall direct all notices and requests for approval required by this Subcontract to the Procurement Representative [OR Contract Administrator] at the following address:

[Insert address]

Any notices and approvals required by this Subcontract from the Contractor to the Subcontractor shall be issued by the Procurement Representative [OR Contract Administrator].

- b. The Contractor's Technical Representative for this Subcontract is [insert name]. The Technical Representative is the person designated to monitor the Subcontract work and to interpret and clarify the technical requirements of the *Statement of Work*. The Technical Representative is not authorized to make changes to the work or modify this Subcontract.

8. Travel Requirements

- a. All travel not included in the Subcontractor's approved budget must be approved in advance by the Contractor.
- b. All foreign travel must be approved in advance by the Contractor, even if the cost is included in the Subcontractor's approved budget for this Subcontract.

9. Performance of Work

The subcontractor will perform the work at a location other than the DOE Facility.

10. Incorporated Documents

The following documents are hereby incorporated as Attachments [OR Appendices] to this Schedule of Articles of this Subcontract:

General Provisions for Standard Research Subcontracts, dated _____
Statement of Work dated _____ [OR Appendix I]
Subcontractor's Cost Proposal dated _____ (if applicable) [OR Appendix II]
Contractor-Furnished Government Property dated _____ [OR Appendix III]

[List others if applicable.]

GENERAL PROVISIONS

CLAUSE 1 - PUBLICATIONS

- A. The Subcontractor shall closely coordinate with the Contractor's Technical Representative regarding any proposed scientific, technical or professional publication related to the results of the work performed or any data developed under this Subcontract. The Subcontractor shall provide the Contractor an opportunity to review any proposed manuscripts describing, in whole or in part, the results of the work performed or any data developed under this Subcontract at least thirty (30) days prior to their submission for publication. The Contractor will review the proposed publication in order to identify any concerns or issues related to matters such as use of proprietary information or patentable material (consistent with the Patent and Data Rights clauses herein), national security, and completeness. A response shall be provided to the Subcontractor within thirty (30) days; otherwise, the Subcontractor may proceed with publication submission. The Subcontractor agrees to reasonably consider any concerns or issues identified by the Contractor's Technical Representative prior to publication.
- B. Subcontractor may acknowledge the Contractor, and Government sponsorship of the work as appropriate.

CLAUSE 2 - NOTICES

- A. The Subcontractor shall immediately notify the Contractor's Procurement Representative [OR Contract Administrator] in writing of: (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; and (2) any claim against the Subcontractor, the cost and expense of which is allowable under the terms of this Subcontract.
- B. If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Subcontract, it shall immediately notify the Contractor's Procurement Representative [OR Contract Administrator] in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

CLAUSE 3 - ASSIGNMENTS

The Contractor may assign this Subcontract to the Government or its designee(s). Except as to assignment of payment due, the Subcontractor shall have no right to assign or mortgage this Subcontract or any part of it without the prior written approval of the Contractor's Procurement Representative [OR Contract Administrator], except for subcontracts already identified in the approved budget.

CLAUSE 4 – DISPUTES

A. Informal Resolution

1. The parties to a dispute shall attempt to resolve it in good faith, by direct, informal negotiations. All negotiations shall be confidential. Pending resolution of the dispute, the Subcontractor shall proceed diligently with the performance of this Subcontract, in accordance with its terms and conditions.
2. The parties, upon mutual agreement, may seek the assistance of a neutral third party at any time, but they must seek such assistance no later than 120 days after the date of the Contractor's receipt of a claim. The requirement to seek the assistance of a neutral third party may be waived or modified only with the consent of all parties. The parties may request the assistance of an established Ombuds Program, where available, or hire a mutually agreeable mediator, or ask the DOE Office of Dispute Resolution to assist them in selecting a mutually agreeable mediator. The cost of mediation shall be shared equally by both parties. If requested by both parties, the neutral third party may offer a non-binding opinion as to a possible settlement. All discussions with the neutral third party shall be confidential.
3. In the event the parties are unable to resolve the dispute by using a neutral third party or waive the requirement to seek such assistance, the Contractor will issue a written decision on the claim.

B. Formal Resolution

1. If a dispute has not been resolved by informal resolution, it may be submitted to binding arbitration upon agreement of both parties, by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA). If arbitration is agreed to by both parties, such decision is irrevocable and the outcome of the arbitration shall be binding on all parties.
2. Each party to the arbitration shall pay its pro rata share of the arbitration fees, not including counsel fees or witness fees or other expenses incurred by the party for its own benefit.
3. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.

C. Litigation

If arbitration is declined for such disputes, the parties may pursue litigation in any court of competent jurisdiction.

D. Governing Law

This Subcontract shall be interpreted and governed in accordance with all applicable federal and state laws and all applicable federal rules and regulations.

CLAUSE 5 - RESPONSIBILITY FOR TECHNOLOGY EXPORT CONTROL

The parties understand that materials and information resulting from the performance of this Subcontract may be subject to export control laws and that each party is responsible for its own compliance with such laws.

CLAUSE 6 - COST ACCOUNTING STANDARDS (CAS) LIABILITY

[Applicable to Subcontracts exceeding \$550,000]

Clause 9 below incorporates the clause, *COST ACCOUNTING STANDARDS - EDUCATIONAL INSITUION*, FAR 52.230-5, in these GENERAL PROVISIONS. Notwithstanding the provisions of that clause, or of any other provision of the Subcontract, the Subcontractor shall be liable to the Government for any increased costs, or interest thereon, resulting from any failure of the Subcontractor, with respect to activities carried on at the site of the work, or of a subcontractor, to comply with applicable cost accounting standards or to follow any practices disclosed pursuant to the requirements of such clause.

CLAUSE 7 - DISCLOSURE AND USE RESTRICTIONS FOR LIMITED RIGHTS DATA

Generally, delivery of Limited Rights Data (or Restricted Computer Software) should not be necessary. However, only if Limited Rights Data will be used in meeting the delivery requirements of a the subcontract, the following disclosure and use restrictions shall apply to and shall be inserted in, any FAR 52.227-14 Limited Rights Notice on any Limited Rights Data furnished or delivered by the Subcontractor or a lower-tier subcontractor pursuant to Sub-paragraph (g)(2) of the *RIGHTS IN DATA - GENERAL* clause of the GENERAL PROVISIONS:

- A. This "Limited Rights Data" may be disclosed for evaluation purposes under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed;
 - B. This "Limited Rights Data" may be disclosed to other contractors participating in the Government's program of which this Subcontract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed; and
-

- C. This "Limited Rights Data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed.

CLAUSE 8 - ORDER OF PRECEDENCE

Any inconsistencies in the documents comprising this Subcontract shall be resolved by giving precedence in the following order: (a) the SCHEDULE OF ARTICLES and this Subcontract Signature Page; (b) these GENERAL PROVISIONS; (c) other referenced documents, exhibits, and attachments; and (d) any referenced specification or *Statement of Work*.

CLAUSE 9 - CLAUSES INCORPORATED BY REFERENCE

The FEDERAL ACQUISITION REGULATION (FAR) and the U.S. DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR) clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of these GENERAL PROVISIONS with the same force and effect as if they were given in full text, as prescribed below.

The full text of the clauses may be accessed electronically at <http://www.arnet.gov/far/> (FAR) and <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation> (DEAR).

As used in the clauses, the term "contract" shall mean this Subcontract; the term "Contractor" shall mean the Subcontractor; the term "subcontractor" shall mean the Subcontractor's subcontractor, and the terms "Government" and "Contracting Officer" shall mean the Contractor, except in FAR clauses 52.227-1 Alternate I, and 52.227-14, and DEAR clauses 952.227-11, 970.5232-3 and 52.245-05 Alternate I, in which clauses "Government" shall mean the United States Government and "Contracting Officer" shall mean the DOE/NNSA Contracting Officer for Prime Contract, DE-_____ with the Contractor. As used in DEAR clauses 952.204-72 and 952.227-9, the term "DOE" shall mean DOE/NNSA or the Contractor.

The modifications of these clause terms are intended to appropriately identify the parties and establish their contractual and administrative reporting relationship, and shall not apply to the extent they would affect the U.S. Government's rights. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

APPLICABLE TO ALL SUBCONTRACTS UNLESS OTHERWISE INDICATED BELOW:

DEAR 952.204-71	SENSITIVE FOREIGN NATIONS CONTROLS (OCT 1997). Applies if the Subcontract is for unclassified research involving nuclear technology.
DEAR 952.204-72	DISCLOSURE OF INFORMATION (APR 1984). Applies if the Subcontract is for unclassified research involving nuclear technology.
FAR 52.216-7	ALLOWABLE COST AND PAYMENT (APR 1998). Substitute 31.3 for 31.2 in paragraph (a).
FAR 52.216-15	PREDETERMINED INDIRECT COSTS RATES (APR 1998).
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999).
FAR 52.222-26	EQUAL OPPORTUNITY (FEB 1999).
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA SHEETS (JAN 1997) AND ALTERNATE I. Applies only if Subcontract involves delivery of hazardous materials.
DEAR 952.227-9	REFUND OF ROYALTIES (DEC 2000). Applies if "royalties" of more than \$250 are paid by a subcontractor at any tier.
DEAR 952.227-11	PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995). (Applies only if Subcontractor is a nonprofit organization as set forth in 48 CFR 27.301. If Subcontractor does not qualify in accordance with 48 CFR 27.301, it may request a patent waiver pursuant to 10 CFR 784.)
FAR 52.227-14	[Check provision below that applies OR include only applicable provision]. ____ RIGHTS IN DATA-GENERAL with ALTERNATE V and DEAR 927.409 Paragraphs (a) and (d)(3). Applies if the Subcontract is for development work, or for basic and applied research where computer software is specified as a Deliverable in the Scope of Work or other special circumstances apply as specified in the agreement. ____ RIGHTS IN DATA-GENERAL with ALTERNATE IV, subparagraph (c)(1) and DEAR 927.409, subparagraph (a) Definitions. Applies if the Subcontract is for basic or applied research and computer software is not specified as a Deliverable in the Scope of Work, and no other special circumstances apply per DEAR 927.409.
FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987). Applies if the Subcontract is based upon a technical proposal.
FAR 52.229-10	STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (OCT 1988). Applies if any part of this Subcontract is to be performed in the State of New Mexico.
FAR 52.232-20	LIMITATION OF COST (APR 1984). Applies if the Subcontract is fully funded.
FAR 52.232-22	LIMITATION OF FUNDS (APR 1984). Applies if the Subcontract is incrementally funded.
FAR 52.242-15	STOP-WORK ORDER (AUG 1989) with ALTERNATE I (APR 1984).

FAR 52.244-6	SUBCONTRACTS (AUG 1998) with ALTERNATE II. (Paragraph (e) insert: "Any subcontract or purchase order for other than "commercial items" exceeding the simplified acquisition threshold.").
FAR 52.245-5	GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIALS, OR LABOR-HOUR CONTRACTS (JAN 1986) with Alternate I. (Paragraphs (e)(1) and (e)(2) insert, "and DOE Acquisition Regulations Subpart 945.5," after the reference to FAR Subpart 45.5).
FAR 52.246-9	INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984).
FAR 52.247-63	PREFERENCE FOR U. S.-FLAG AIR CARRIERS (JAN 1997). Applies if the Subcontract involves international air transportation.
FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (JUN 2000).
DEAR 952.247-70	FOREIGN TRAVEL (DEC 2000).
FAR 52.249-5	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (SEP 1996).
DEAR 952.217-70	ACQUISITION OF REAL PROPERTY (APR 1984). Applies if the Subcontract involves leased space that is reimbursed.

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$2,500:

FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2000).
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APPLICABLE IF THE SUBCONTRACT IS FOR \$10,000 OR MORE:

FAR 52.222-35	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998).
FAR 52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998).
FAR 52.222-37	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999).

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$100,000:

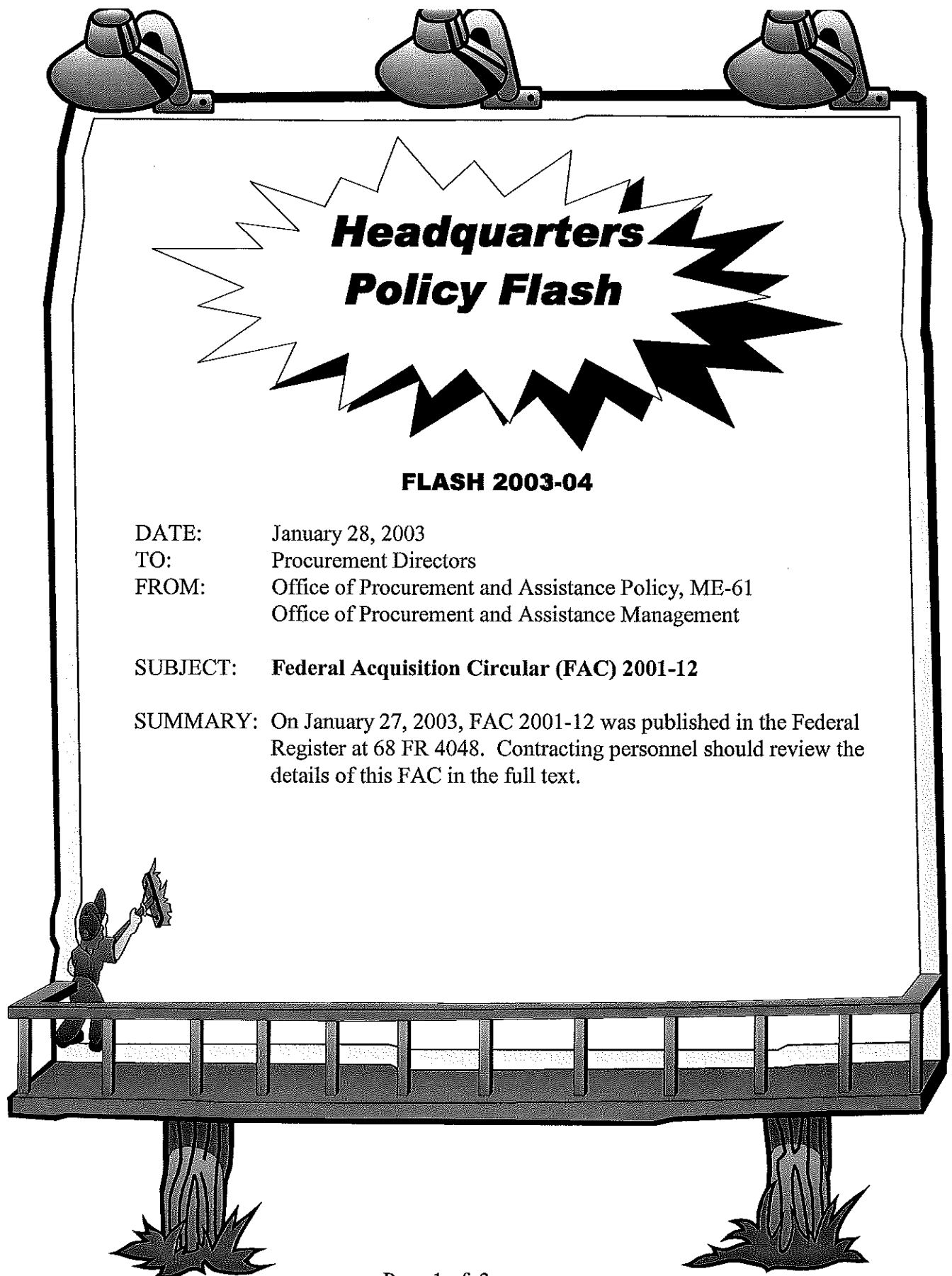
FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JULY 1995).
FAR 52.203-7	ANTI-KICKBACK PROCEDURES (JULY 1995), excluding Paragraph (c)(1).
FAR 52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997).
FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUNE 1997).

FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000).
FAR 52.222-04	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (SEP 2000).
DEAR 970.5227-4	AUTHORIZATION AND CONSENT (AUG 2002), Paragraph (a).
DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000).
DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000).

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$500,000:

FAR 52.215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) if subcontract exceeds \$550,000.
FAR 52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS (OCT 1997) not used when 52.215-10 is included. In subcontracts greater than \$550,000.
FAR 52.215-12	SUBCONTRACTOR COST OR PRICING DATA (OCT 1997). Applies if 52.215-10 applies.
FAR 52.215-13	SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (OCT 1997). Applies if 52.215-11 applies.
FAR 52.227-16	ADDITIONAL DATA REQUIREMENTS (JUNE 1987).
FAR 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000). Applies unless there are no subcontracting possibilities.
FAR 52.230-5	COST ACCOUNTING STANDARDS – EDUCATIONAL INSTITUTION (APR 1998).
FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999).

(END OF GENERAL PROVISIONS)



Headquarters Policy Flash

FLASH 2003-04

DATE: January 28, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular (FAC) 2001-12**

SUMMARY: On January 27, 2003, FAC 2001-12 was published in the Federal Register at 68 FR 4048. Contracting personnel should review the details of this FAC in the full text.

FLASH 2003-04
(January 28, 2003)

Federal Acquisition Circular (FAC) 2001-12

The following is in FAC 2001-12, which was published in the Federal Register on January 27, 2003, at 68 FR 4048. *The effective date is January 24, 2003.* The FAC is available via the internet at <http://www.arnet.gov/far/facsframe.html>

Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack (FAR Case 2002-026)

This is an interim rule with request for comments, on or before March 28, 2003, amending FAR Part 2, Definition of Words, Part 10, Market Research, Part 12, Acquisition of Commercial Items, Part 13, Simplified Acquisition Procedures, and Part 19, Small Business Programs. The effective date of this FAC covers solicitations during a one-year period beginning November 25, 2002. The interim rule-

- ☞ Specifies that the following authorities granted apply to any procurement of property or services by or for an executive agency to facilitate the defense of nuclear, biological, chemical, or radiological (NBCRT) attack, only if the solicitation is issued before November 25, 2003.
- ☞ Increase of Simplified Acquisition Threshold and automatic Small Business Reservation (greater than \$2,500 and less than or equal to \$100,000) to-
 - ▶ \$200,000 in U.S.; and
 - ▶ \$300,000 outside US.

Supporting humanitarian or peacekeeping operation or a contingency operation (See FAR Part 2 and Part 19)

- ☞ Increase of micro-purchase threshold to \$7,500 (See FAR Part 2, Part 13, and Part 19);
- ☞ Provides that Commercial Items procedures, as stated in law-
 - ▶ Apply to non-commercial item procurements; and
 - ▶ Removes the \$5,000,000 limitation. (See FAR Part 12 and Part 13)

FLASH 2003-04
(January 28, 2003)

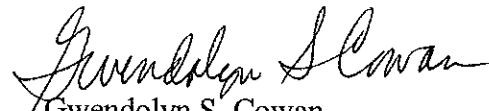
☞ Directs the use of streamlined acquisition authorities and procedures, such as-

- ▶ Non-Competitive procedures (sole source, unusual and compelling urgency, national security, etc.);
- ▶ Task and delivery order contracts;
- ▶ Exemption from publicizing a notice; and

Waives the dollar limits on sole source 8(a) acquisitions and HUBZone Sole Source awards for these acquisitions. (See FAR Part 19).

☞ Requires that market research be conducted on an ongoing basis to effectively identify capabilities (small business and new entrants in Federal contracting) that are available in the marketplace to defend against or help meet the recovery from terrorism or NBCRT. (See FAR Part 10).

Questions concerning this Flash should be directed to Denise Wright at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov


Gwendolyn S. Cowan
Director

cc:
PPAG Members



Federal Register

Monday,
January 27, 2003

Part VI

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Parts 2, 10, et al.

Federal Acquisition Regulations; Interim
and Final Rules

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 2, 10, 12, 13, 19, and 25

[FAC 2001-12; FAR Case 2002-026]

RIN 9000-AJ54

**Federal Acquisition Regulation;
Procurements for Defense Against or
Recovery From Terrorism or Nuclear,
Biological, Chemical or Radiological
Attack**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107-296). Those sections increase the amount of the micro-purchase threshold and, in certain situations, the simplified acquisition threshold and provide streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The Act text covers solicitations issued during the one-year period starting on the date of enactment (November 25, 2002), but the Act does not become effective until 60 days after enactment (January 24, 2003).

DATES: *Effective Date:* January 24, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before March 28, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2002-026@gsa.gov.

Please submit comments only and cite FAC 2001-12, FAR case 2002-026, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS

Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 2001-12, FAR case 2002-026.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule implements Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107-296)). These provisions, which are set forth in Title VIII, Subtitle F of the Act, provide Federal emergency procurement flexibilities.

Section 852 specifies that the authorities granted in the subtitle apply to acquisitions of supplies or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued before November 25, 2003.

Section 853 increases the simplified acquisition threshold to \$200,000 (\$300,000 for contracts awarded and performed outside the United States) for acquisitions referred to in section 852 that are carried out in support of a humanitarian or peacekeeping operation or a contingency operation. The definition of simplified acquisition threshold in FAR 2.101 has been revised to reflect this change. As further required by section 853, FAR 19.502-2(a) has been amended to increase the small business reservation to mirror these increased thresholds.

Section 854 increases the micro-purchase threshold to \$7,500 for acquisitions referred to in section 852. To implement this change, the rule modifies (1) the definition of micro-purchase threshold at FAR 2.101, (2) guidance on the use of micro-purchase authority at FAR 13.201, and (3) coverage at FAR 19.502-1 addressing the applicability of set-aside requirements.

Section 855 allows agencies to treat acquisitions referred to in section 852 as commercial items and removes the \$5,000,000 limitation for the Test Program for Certain Commercial Items for these acquisitions. FAR 12.102(f), addressing the applicability of commercial item policies, and FAR Subpart 13.5 on the use of the commercial items test authority, have been revised accordingly.

Section 856 provides for the use of streamlined acquisition authorities and procedures authorized by law for a

procurement referred to in section 852 and waives the dollar limitations on sole source 8(a) acquisitions and HUBZone Sole Source awards for these acquisitions. Changes have been made at FAR 19.805-1 and 19.1306.

Section 858 calls for market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. This requirement is reflected in FAR 10.001.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Councils prepared an Initial Regulatory Flexibility Analysis (IRFA), and it is summarized as follows:

The increased thresholds are limited to apply to acquisitions of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. There are no data available on the number of procurements that will be eligible. We expect the increased thresholds to this limited class of procurements will apply to a very small number of small entities.

This interim rule does not impose any data collection requirements on small business concerns. The rule does not duplicate, overlap, or conflict with other relevant Federal rules. There are no significant alternatives to the interim rule that would accomplish the stated beneficial objective.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001-12, FAR Case 2002-026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the FAR coverage implements Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107-296), signed on November 25, 2002, which provides for urgently needed authorities to be used in the fight against, and recovery from terrorism.

However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 10, 12, 13, 19, and 25

Government procurement.

Dated: January 16, 2003.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-12 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001-12 are effective January 24, 2003.

Dated: January 16, 2003.

Deidre A. Lee,
Director, Defense Procurement and Acquisition Policy.

Dated: January 16, 2003.

David A. Drabkin,
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: January 16, 2003.

Tom Luedtke,
Assistant Administrator for Procurement, National Aeronautics and Space Administration.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 10, 12, 13, 19, and 25 as set forth below:

1. The authority citation for 48 CFR parts 2, 10, 12, 13, 19, and 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Contingency operation" and "Humanitarian or peacekeeping operation"; and revising the definitions "Micro-purchase threshold" and "Simplified acquisition threshold" to read as follows:

2.101 Definitions.

* * * * *

Contingency operation (10 U.S.C. 101(a)(13)) means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of 10 U.S.C., chapter 15 of 10 U.S.C. or any other provision of law during a war or during a national emergency declared by the President or Congress.

* * * * *

Humanitarian or peacekeeping operation means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing (10 U.S.C. 2302(8) and 41 U.S.C. 259(d)).

* * * * *

Micro-purchase threshold means \$2,500, except it means—

(1) \$2,000 for construction subject to the Davis Bacon Act; and

(2) \$7,500 for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism (defined at Public Law 107-296, Sec. 2) or nuclear, biological, chemical, or radiological attack, as described in 13.201(g)(1)(i), except for construction subject to the Davis Bacon Act (Public Law 107-296, Sec. 854). The threshold is \$15,000 for acquisitions by or for the Department of Defense as

described in 13.201(g)(1)(ii) (Public Law 107-107, Sec. 836(a)(1)(A)).

* * * * *

Simplified acquisition threshold means \$100,000, except that—

(1) In the case of any contract to be awarded and performed, or purchase to be made outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means \$200,000; or

(2) For acquisitions of supplies or services that, as determined by the head of the agency are to be used to facilitate defense against or recovery from terrorism (defined at Public Law 107-296, Sec. 2) or nuclear, biological, chemical, or radiological attack—

(i) For any agency, in support of a humanitarian or peacekeeping or a contingency operation if initiated by a solicitation issued from January 24, 2003, to November 24, 2003 (Public Law 107-296, Sec. 853(a)), the term means—

(A) \$200,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) \$300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

(ii) By or for the Department of Defense in support of a contingency operation if award is made and funds are obligated on or before September 30, 2003 (Public Law 107-107, Sec. 836(a)(1)(B)), the term means—

(A) \$250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) \$500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

PART 10—MARKET RESEARCH

3. Amend section 10.001 by removing the word "and" at the end of paragraph (a)(2)(iii); and adding paragraph (a)(2)(v) to read as follows:

10.001 Policy.

(a) * * *

(2) * * *

(v) Agencies shall conduct market research on an ongoing basis, and take advantage to the maximum extent practicable of commercially available market research methods, to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical or radiological attack (Public Law 107-296, Sec. 858); and

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Amend section 12.102 by revising paragraph (f) to read as follows:

12.102 Applicability.

(f)(1) Contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items. This paragraph applies to solicitations issued by any agency from January 24, 2003, through November 24, 2003 (Public Law 107-296, Sec. 856).

(2) Acquisition of biotechnology supplies or services, for use to facilitate the defense against terrorism or biological attack against the United States, by or for the Department of Defense shall be considered as an acquisition of commercial items when award is made and funds are obligated on or before September 30, 2003 (Public Law 107-107, Sec. 836(a)(2)). The authority of this paragraph is in addition to and does not limit the authority of paragraph (f)(1) of this section. Nothing in this paragraph shall preclude a contracting officer from treating an acquisition described in this paragraph as one for a non-commercial item if a determination is made by the contracting officer that the purchase cannot be made at a fair and reasonable price using the policies of this part.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Amend section 13.003 by revising paragraph (b)(1) to read as follows:

13.003 Policy.

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 (\$7,500 for acquisitions as described in 13.201(g)(1)(i) and \$15,000 for acquisitions as described in 13.201(g)(1)(ii)) and not exceeding \$100,000 (\$200,000 for acquisitions described in paragraph (2)(i) of the Simplified Acquisition Threshold definition at 2.101) is reserved exclusively for small business concerns and shall be set aside (*see* 19.000 and subpart 19.5). *See* 19.502-2 for exceptions.

6. Amend section 13.105 by revising the first sentence of paragraph (b) to read as follows:

13.105 Synopsis and posting requirements.

(b) When acquiring commercial items or supplies or services procured in accordance with 12.102(f)(1) and (f)(2), the contracting officer may use a combined synopsis and solicitation.

7. Amend section 13.201 by revising paragraph (g) to read as follows:

13.201 General.

(g)(1) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, the temporary micro-purchase thresholds are

(i) \$7,500 for acquisitions by or for any agency if the award is made from January 24, 2003, through November 24, 2003; and

(ii) \$15,000 for acquisitions by or for the Department of Defense if award is made and funds are obligated on or before September 30, 2003.

(2) Purchases using this authority must have a clear and direct relationship to defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

8. Amend section 13.500 in paragraph (a) by removing the period from the end of the first sentence and adding "1", except as provided in paragraph (e) of this section." in its place; and adding paragraph (e) to read as follows:

13.500 General.

(e) The \$5,000,000 limitation provided in this subpart 13.5 does not apply to acquisitions of supplies or services using the authority provided by 12.102(f)(1). Notwithstanding the expiration of the test program specified in paragraph (d) of this section, authority to use simplified procedures under this paragraph applies to an acquisition when the solicitation is issued by any agency from January 24, 2003, through November 24, 2003.

9. Amend section 13.501 by—

a. Removing from paragraph (a)(1)(i) the phrase "paragraphs (a)(2)(i) and (a)(2)(ii)" and adding "paragraph (a)(2)" in its place;

b. Revising paragraph (a)(1)(ii);

c. In paragraph (a)(2)(ii) by adding "but not exceeding \$10,000,000," after "\$500,000,"; and

d. Adding paragraphs (a)(2)(iii) and (a)(2)(iv). The revised and added text reads as follows:

13.501 Special documentation requirements.

(a) * * *

(1) * * *

(ii) Prepare sole source justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Homeland Security Act (Public Law 107-296, section 856) as implemented at 12.102(f)(1).

(2) * * *

(iii) For a proposed contract exceeding \$10,000,000 but not exceeding \$50,000,000, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iv) For a proposed contract exceeding \$50,000,000 the official described in 6.304(a)(4) must approve the justification and approval. This authority is not delegable except as provided in 6.304(a)(4).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

10. Amend section 19.502-1 by revising paragraph (b) to read as follows:

19.502-1 Requirements for setting aside acquisitions.

* * * * *

(b) This requirement does not apply to purchases of \$2,500 or less (\$7,500 or less for acquisitions as described in 13.201(g)(1)(i) or \$15,000 or less for acquisitions as described in 13.201(g)(1)(ii)), or purchases from required sources of supply under Part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

11. Amend section 19.502-2 by revising the first sentence of paragraph (a) to read as follows:

19.502-2 Total small business set-asides.

(a) Except for those acquisitions set aside for very small business concerns (*see* subpart 19.9), each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 (\$7,500 for acquisitions as described in 13.201(g)(1)(i) or \$15,000 for acquisitions as described in 13.201(g)(1)(ii)), but not over \$100,000 (\$200,000 for acquisitions described in paragraph (2)(i) of the Simplified Acquisition Threshold definition at 2.101), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer

determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.

* * *

12. Amend section 19.805-1 in paragraph (b)(1) by removing from the end of the sentence "or"; in paragraph (b)(2) by removing the period at the end of the sentence and adding "; or" in its place; and adding paragraph (b)(3) to read as follows:

19.805-1 General.

(b) * * *

(3) The acquisition is conducted under the authority of the Homeland Security Act (Public Law 107-296) and—

(i) The acquisition is for supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack;

(ii) The solicitation is issued during the period of January 24, 2003, through November 24, 2003; and

(iii) There is either an approved 13.501 justification for sole source acquisition, or an approved 6.303 justification using one of the authorities at 6.302-1, 6.302-2, 6.302-6, or 6.302-7.

* * *

13. Amend section 19.903 by removing from the end of paragraph (b)(2) "or"; redesignating paragraph (b)(3) as (b)(4); adding a new paragraph (b)(3); and by removing from newly designated paragraph (b)(4) "13.201(g)" and adding "13.201(g)(1)(ii)" in its place. The added text reads as follows:

19.903 Applicability.

* * *

(b) * * *

(3) Acquisitions of \$7,500 or less for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack as described in 13.201(g)(1)(i); or

* * *

14. Amend section 19.1306 by revising the introductory text of paragraph (a)(2); and adding paragraph (c) to read as follows:

19.1306 HUBZone sole source awards.

(a) * * *

(2) Except as provided in paragraph (c) of this section, the anticipated price

of the contract, including options, will not exceed—

* * *

(c) The contracting officer may award contracts exceeding the limits in paragraph (a)(2) of this section to HUBZone small business concerns on a sole source basis if the acquisition is conducted under the authority of the Homeland Security Act (Public Law 107-296, Sec. 856(b)) and—

(1) The acquisition is for supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack;

(2) The solicitation is issued, during the period of January 24, 2003, through November 24, 2003; and

(3) There is either an approved 13.501 justification for sole source acquisition, or an approved 6.303 justification using one of the authorities at 6.302-1, 6.302-2, 6.302-6, or 6.302-7.

PART 25—FOREIGN ACQUISITION

15. Amend section 25.1101 by revising the introductory text of paragraph (a)(1) to read as follows:

25.1101 Acquisition of supplies.

* * *

(a)(1) Insert the clause at 52.225-1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding \$2,500 (\$7,500 for acquisitions as described in 13.201(g)(1)(i) or \$15,000 for acquisitions as described in 13.201(g)(1)(ii)) but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

* * *

16. Amend section 25.1103 by revising paragraph (a) to read as follows:

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225-13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding \$2,500, \$7,500 for acquisitions as described in 13.201(g)(1)(i), or \$15,000 for acquisitions as described in 13.201(g)(1)(ii), unless an exception applies (*see* 25.701(a)(2)).

* * *

[FR Doc. 03-1687 Filed 1-24-03; 8:45 am]

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Regulation; Small
Entity Compliance Guide**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

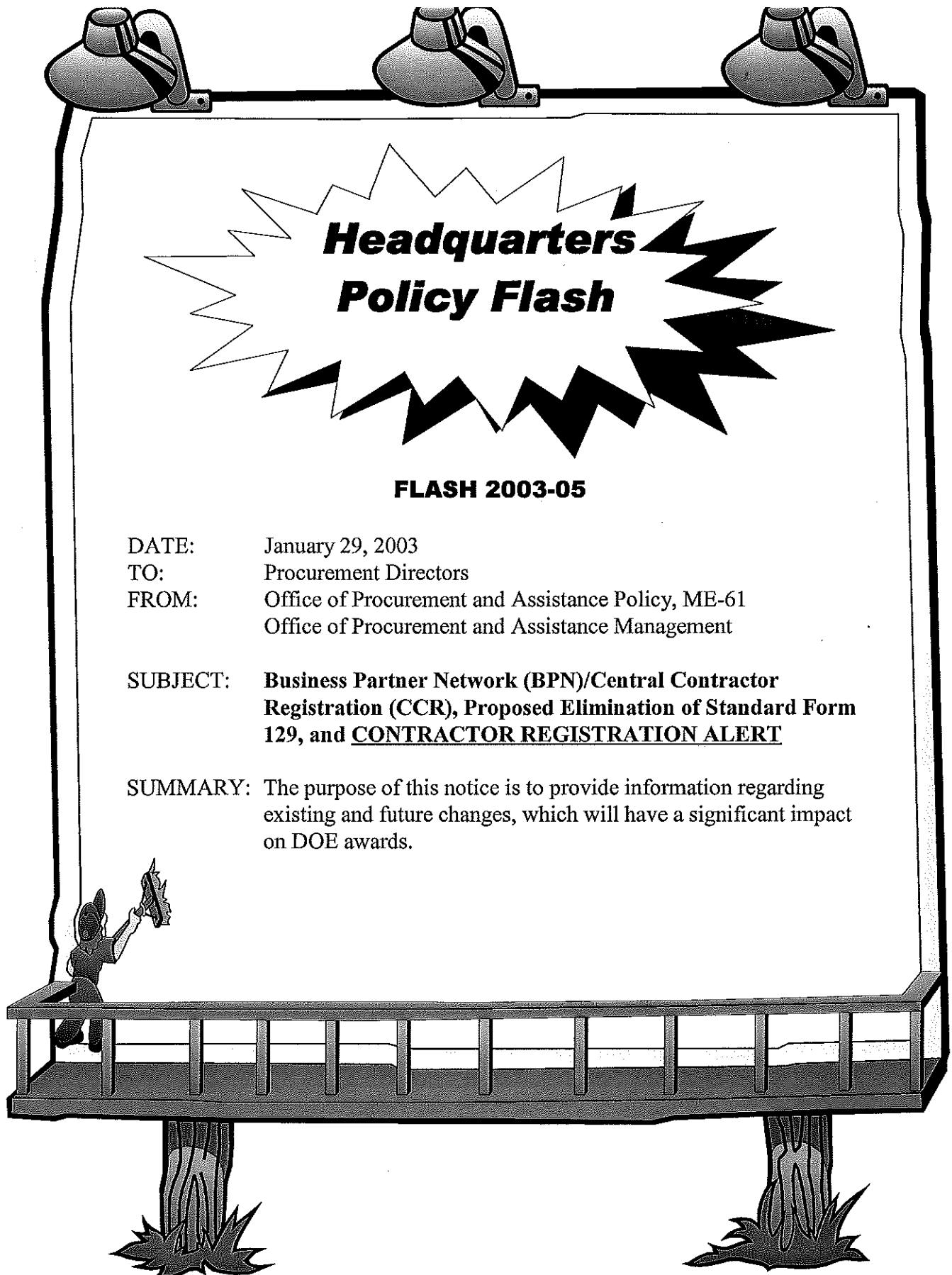
ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2001-12 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001-12 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, General Services Administration, at (202) 501-4764.

Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack (FAR Case 2002-026)

This interim rule revises the Federal Acquisition Regulation (FAR) in order to implement Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107-296). Those sections increase the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements and provide streamlined procedures for acquisitions of supplies or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The



Headquarters Policy Flash

FLASH 2003-05

DATE: January 29, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Business Partner Network (BPN)/Central Contractor
Registration (CCR), Proposed Elimination of Standard Form
129, and CONTRACTOR REGISTRATION ALERT**

SUMMARY: The purpose of this notice is to provide information regarding
existing and future changes, which will have a significant impact
on DOE awards.

FLASH 2003-05
(January 29, 2003)

Background

BPN/CCR are elements of the Integrated Acquisition Environment (IAE), which is an e-Government initiative stemming from the President's Management Agenda. In order to broaden use and reliance on e-business applications, the FAR Councils are working with the Office of Federal Procurement Policy to eliminate the need to maintain paper-based sources of contractor information. Consequently, the BPN and CCR are merging to achieve an electronic environment with government wide process applicability.

In concert with the BPN/CCR deployment, changes to the Federal Acquisition Regulation (FAR) are scheduled to take place. On November 6, 2002, a proposed rule was published in the Federal Register at 67 FR 67762, eliminating Standard Form 129, Solicitation Mailing List Application. Other anticipated changes to the FAR are FAR Case 2002-018, Central Contractor Registration, and FAR Case 2002-024, On-Line Representations and Certifications, not yet published in the FAR.

FAR Case 2002-018 requires registration in CCR by September 30, 2003 of all contractors, proposed and otherwise, who intend to do business with the Federal Government. Contractors not registered by that date in the CCR/BPN will not receive future or scheduled awards.

Business Partner Network (BPN)/Central Contractor Registration(CCR)

The BPN strategy provides the single source of vendor data, to include contracts, grants, and interagency agreements, for the Federal Government. The BPN will provide web enabled capability for identifying Federal (interagency) and industry (vendor) trading partners. The BPN will be a one stop source for information about trading partners providing access to several key databases across Federal Agencies, such as, Past Performance, Small Business Administration Pro-Net, Equal Employment Opportunity compliance checks, etc.

Currently, the CCR is a searchable database accessible via the Internet, which supports Federal agencies' needs for valid vendor data for contracting and finance processes. The database enables prospective contractors and existing contractors to update or enter their corporate data in one place at <http://www.ccr.gov> As a single validated source of data on contractors doing business with the Government, contracting officers may access CCR to obtain contractor data and industry information.

FLASH 2003-05
(January 29, 2003)

As you know, the CCR is already implemented through FAR at various provisions and clauses including FAR 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, which is a requirement for use under FAR Case 2002-018 Central Contractor Registration. However, the term BPN is not currently in the FAR but will be soon be as part of the above mentioned FAR Case and will absorb the CCR as we transition to the new larger BPN concept. Therefore, you may see these terms used interchangeably during the transition. The attached chart visually describes the new network.

How Will CCR Work?

Currently, government wide policy is being developed to amend the FAR to make CCR registration for vendors mandatory if their goal is to do business with the Federal Government. FAR Case 2002-018, Central Contractor Registration, requires that all contractors and prospective contractors [with exceptions] be registered prior to award of a contract, basic agreement, basic ordering agreement, and blanket purchase agreement, including the modification of these instruments.

Although the CCR may be accessed via the Internet, each Federal agency must subscribe to the services provided by the CCR's managing organization (DoD) in order to access proprietary contractor and proposed contractor data. DoD will provide a copy of the CCR database to the subscribing Federal agency. At present, it is anticipated that only one subscription will be obtained for the DOE. The CCR database will be centrally maintained by DOE and those organizations requiring access or integration will obtain it from the centrally maintained version. Initially, the Office of Procurement and Assistance Management will obtain and maintain the agency's database.

Will BPN/CCR Connect to Existing Procurement Databases?

Corporate systems, financial assistance systems, IIPS, PADS, the SRS, etc., are targeted for CCR integration October 1, 2003. Certain activities may cease prior to final systems integration, such as, issuing notices to potential contractors from IIPS could discontinue as early as June 2003.

Will Financial Assistance Recipients be Required to Register in BPN/CCR?

The E-Grants Program Management Office is currently developing the government-wide policy for financial assistance recipients regarding registration in the BPN/CCR. Guidance will provided once the policy is issued.

FLASH 2003-05
(January 29, 2003)

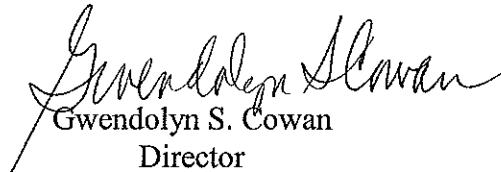
What is the Schedule for BPN/CCR Implementation?

Contractor registration in CCR is expected to become mandatory on September 30, 2003. This means that those prospective contractors or contractors not registered in the CCR by September 30, 2003, will be prohibited from doing business with the Federal government, if an exception does not apply. No contracts will be awarded or orders issued to any firm not in compliance with CCR registration, including the maintenance of registration until final payment is made.

When can Contractors Register in CCR?

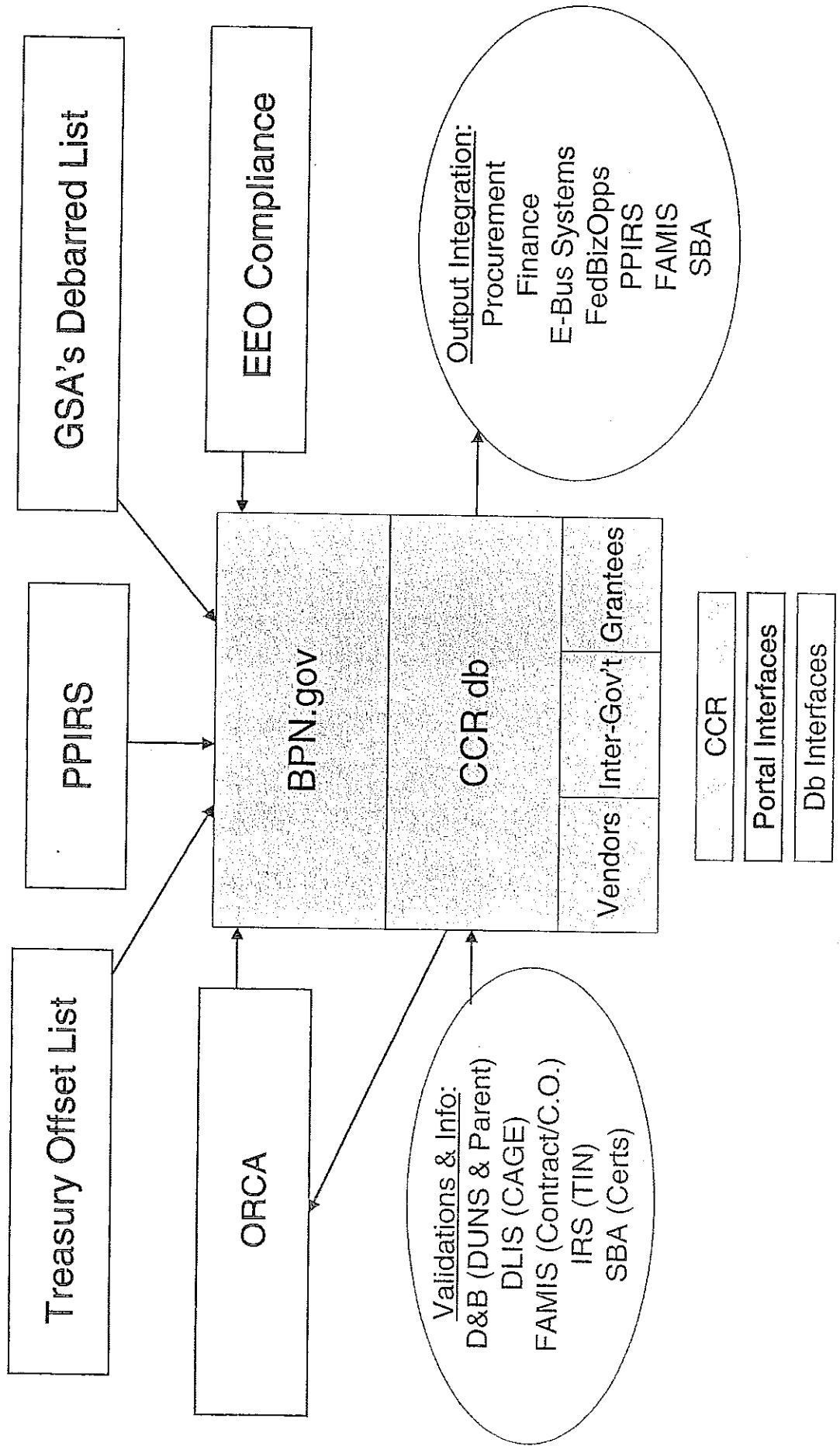
Contractor's and prospective contractor's should register in CCR **immediately**. Even though the mandatory registration date is not until September 20, 2003, the burden of ensuring all existing contractors and prospective contractors registration could be overwhelming on contracting personnel if contracting activities do not begin now to ensure that contractors are registered. Consequently, all offerors and potential offerors should be advised to begin registration in the CCR at once.

Questions concerning this Flash should be directed to Denise Wright at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov or Doug Baptist at (202) 586-0813 or via e-mail at douglas.baptist@pr.doe.gov


Gwendolyn S. Cowan
Director

cc:
PPAG Members
FAAC Members

Functional View of the BPN





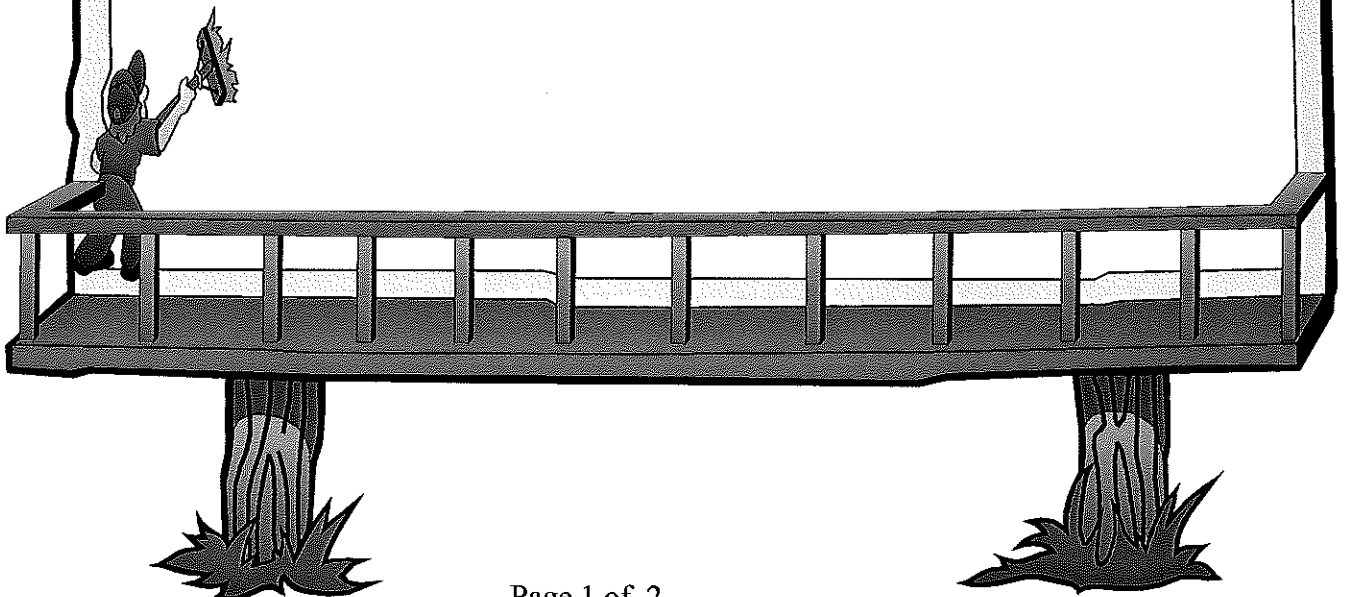
Headquarters Policy Flash

FLASH 2003-06

DATE: February 11, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Affirmative Procurement Program - Acquisition of Products
Containing Recovered Materials**

SUMMARY: This Policy Flash transmits a summary of a new Rule recently published in the Federal Register on February 7, 2003 at 68 FR 6355 entitled "Affirmative Procurement Program - Acquisition of Products Containing Recovered Materials."

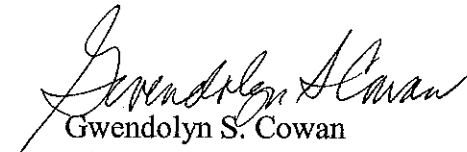


Flash 2003-06
February 11, 2003

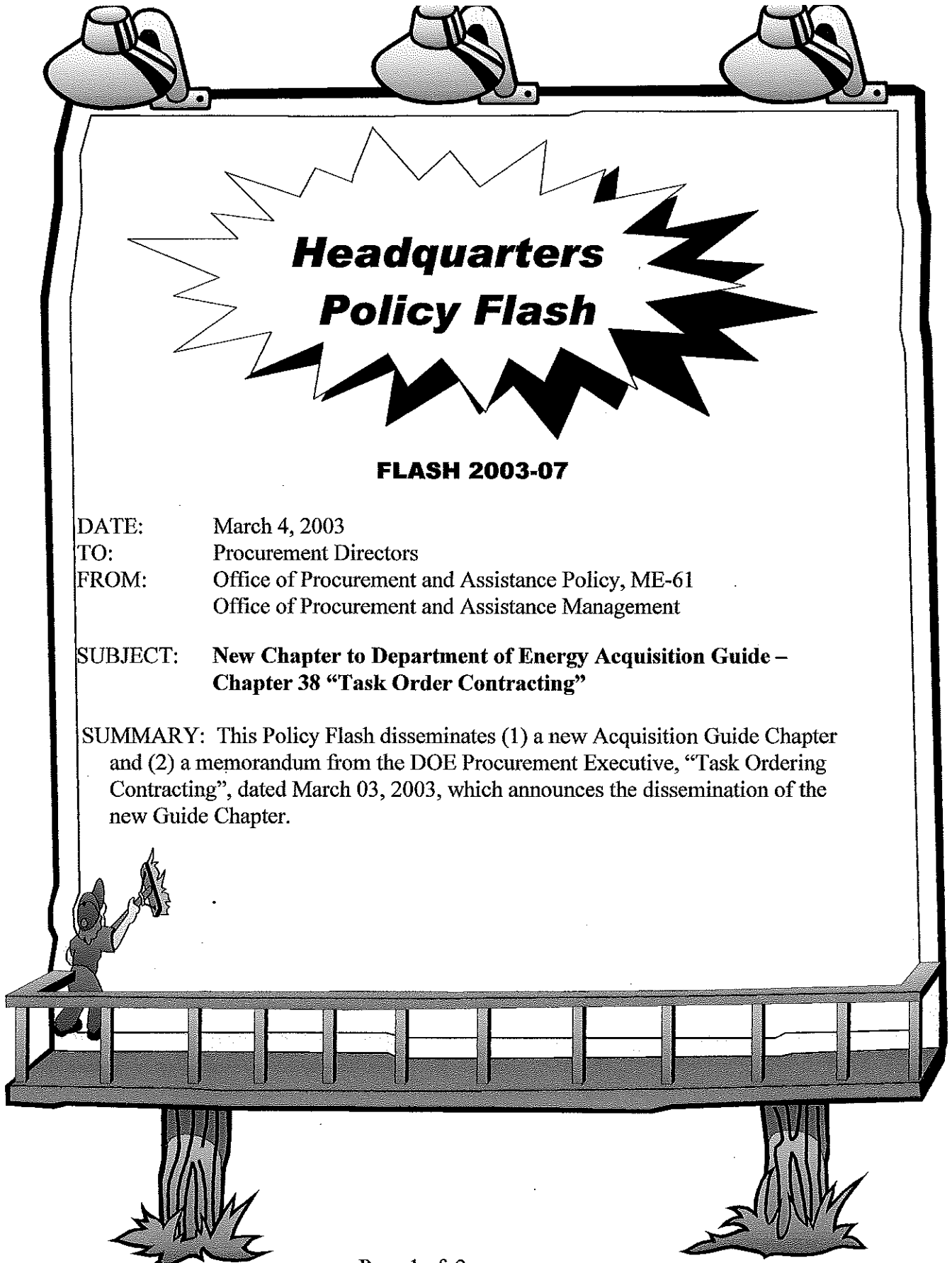
The rule updates Department of Energy Acquisition Regulation coverage to implement Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition. The most significant element of the rule is the extension of the Affirmative Procurement (Buy Recycled) requirements into management contract subcontracting under limited circumstances. If the management contractor subcontracts activity involving the acquisition of EPA-designated products, then the requirements of the Affirmative Procurement Program will apply, including the Affirmative Procurement Program clause and its reporting requirements.

Note: The final rule finalizes an action begun with a proposed rule published November 30, 2000 and is effective March 30, 2003.

Questions concerning the Rule should be addressed to Richard Langston at (202) 586-8247 or via e-mail at richard.langston@hq.doe.gov


Gwendolyn S. Cowan
Director

cc:
PPAG Members



Headquarters Policy Flash

FLASH 2003-07

DATE: March 4, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management
SUBJECT: **New Chapter to Department of Energy Acquisition Guide –
Chapter 38 “Task Order Contracting”**

SUMMARY: This Policy Flash disseminates (1) a new Acquisition Guide Chapter and (2) a memorandum from the DOE Procurement Executive, “Task Ordering Contracting”, dated March 03, 2003, which announces the dissemination of the new Guide Chapter.

Flash 2003-07
March 4, 2003

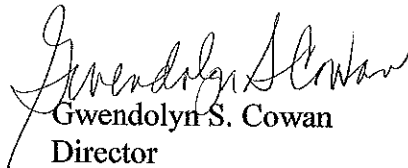
Attached to new Chapter 38 is an updated version of the "Strategic Acquisition Transactions Guide (SATG)". The SATG was previously disseminated for information in Policy Flash 2003-02, dated January 8, 2003, and has now been incorporated as an official attachment to Acquisition Guide Chapter 38.

Specific changes to the SATG include a discussion of:

- bundling and small business interests;
- appropriate use of the multiple award approach in acquisition planning;
- proper exceptions to fair opportunity; and
- the structure and exercise of task order options.

With the issuance of Acquisition Guide Chapter 38, Task Order Contracting, AL 2000-07, "MACS, GWACS and FSS" dated August 17, 2000 is hereby cancelled.

Questions concerning this Policy Flash or the proposed new Acquisition Guide Chapter should be addressed to Michael Fischetti at (202) 586-8192 or via e-mail at Michael.Fischetti@pr.doe.gov


Gwendolyn S. Cowan
Director

cc:
PPAG Members



Headquarters Policy Flash

FLASH 2003-08

DATE: March 07, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Issuance of Two New Acquisition Letters (ALs):

1. Acquisition Letter 2003-01 - Acquisition Letters Remaining in Effect
2. Acquisition Letter 2003-02 - Contract Management Planning

SUMMARY: 1. Acquisition Letter (AL) 2003-01 - Acquisition Letters Remaining in Effect

This Flash transmits a new Acquisition Letter (AL) 2003-01 which lists all acquisition letters that still remain in effect.



FLASH 2003-08

March 07, 2003

Previous Acquisition Letters that do not appear on this listing have been superseded by a formal rule-making, incorporated into other guidance, and/or canceled.

For further questions concerning this AL, please contact Michael Fischetti at (202) 586-8192 or via e-mail at michael.fischetti@pr.doe.gov

2. Acquisition Letter (AL) 2003-02 - Contract Management Planning

Acquisition Letter (AL) 2003-02, approved by the Field Management Council Review for release and issuance, sets forth guidance on proper contract management planning under applicable DOE contracts. In correlation with the AL, a Contract Management Planning Guide was also created to provide assistance for the Department in formulating a structured and integrated systematic approach for performing contract management planning.

Contract Management Plans shall be prepared and utilized for:

- ◆ management & operating (M&O) contracts;
- ◆ major site and facility contracts for performance of work at current or former M&O contract sites and facilities; and
- ◆ contracts subject to the requirements of DOE O 413.3, "Program and Project Management for the Acquisition of Capital Assets," and any successor directives.

Procurement Directors should also consider the use of a contract management plan for other service contracts where one or more of the following elements are present:

- ◆ the dollar value of the contract is significant;
- ◆ contract administration is of a sufficiently complex nature to require a CMP because of unique contract terms and conditions (including contract type);
- ◆ the contracting office has little or no historical familiarity with the contract requirements;
- ◆ the number of contracting officer's representatives requires a greater degree of coordination; or



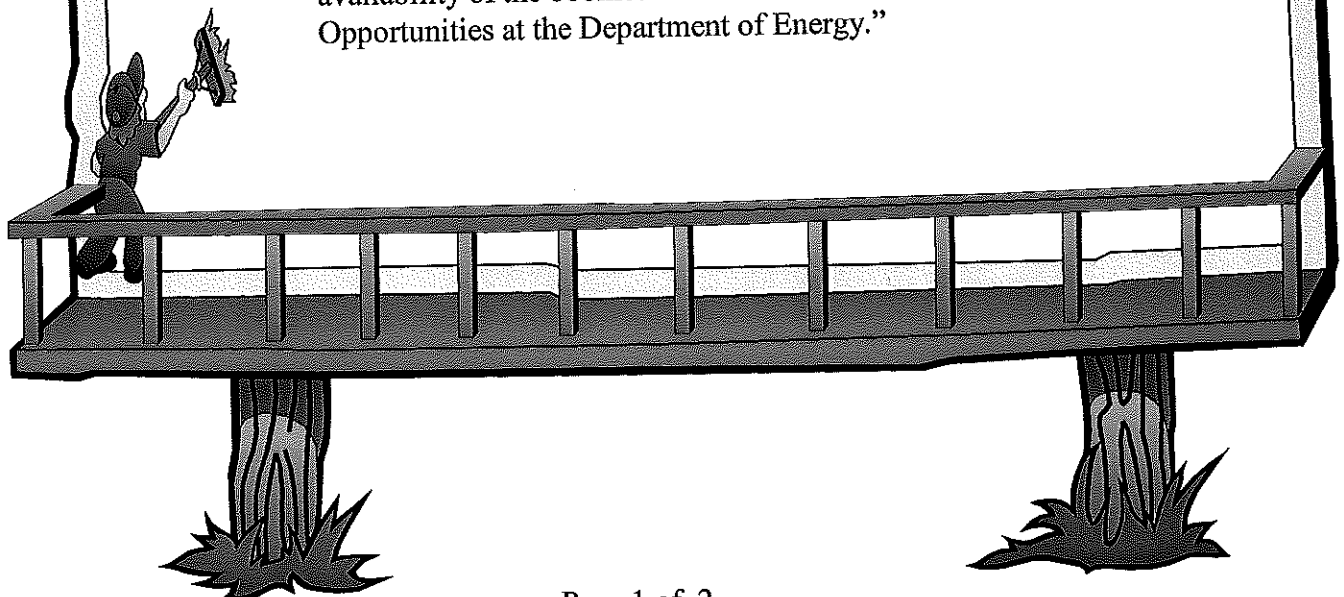
Headquarters Policy Flash

FLASH 2003-09

DATE: March 27, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **■ New Guide Subchapter 70.10 "Inter-Contractor Purchases"**
■ Federal Financial Assistance Opportunities at the Department of Energy (DOE)

SUMMARY: This Flash disseminates the new guide subchapter Chapter 70.10 "Inter-Contractor Purchases" which was contained formerly in AL 98-03, since rescinded, and also provides the location and availability of the booklet entitled "Federal Financial Assistance Opportunities at the Department of Energy."



FLASH 2003-09
March 27, 2003

■ **New Guide Subchapter 70.10 "Inter-Contractor Purchases"**

This subchapter has been added to the DOE Acquisition Guide to provide guidance on the internal management process for contracting activities to ensure that Inter-Contractor Purchases (ICPs) entered into by authorized contractors comply with necessary requirements.

The Department's ICP process evolved to expedite the acquiring of unique or specialized services and expertise from other DOE major facilities contractors, thereby reducing lead and delivery time from months to a matter of days. The ICP process, however, was intended for use only in special circumstances (e.g., where services are not readily available from the private sector). It is the contractor's responsibility to report to DOE any inappropriate uses and periodically assess the use of ICP transactions.


Among other things, this Guide Subchapter provides the principles against which a proposed ICP transaction should be judged.

Questions concerning the ICP Guide Chapter should be addressed to Bob Webb at 202-586-8264 or via e-mail at robert.webb@hq.doe.gov.

■ **Federal Financial Assistance Opportunities at the Department of Energy (DOE)**

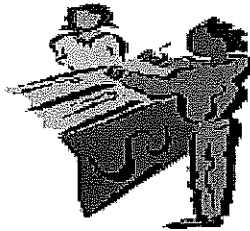
"Federal Financial Assistance Opportunities at the Department of Energy" is a booklet that describes DOE's financial assistance opportunities. This booklet is located on our home page at <http://doe-iips.pr.doe.gov> the E-center in the Other Business Opportunities section. It has been updated to reflect new Internet addresses, program changes, reorganizations, etc.

Questions concerning the Federal Financial Assistance Opportunities at the Department of Energy booklet should be addressed to Richard Langston at 202-586-8247 or via e-mail at richard.langston@hq.doe.gov


Robert Webb,
Acting Director

cc:
PPAG Members
FAAC Members

Inter-Contractor Purchases



■ Overview

This chapter provides guidance on the internal management control process to be followed by contracting activities to ensure that Inter-Contractor Purchases (ICPs) entered into by authorized contractors under their cognizance comply with necessary requirements.

This guidance provided here does not affect a contractor's ability to place orders against pre-established contracts for property or services awarded by another contractor for use by other Department of Energy (DOE) contractors pursuant to the consortium purchasing concept. This guidance also does not affect the responsibilities for accounting for ICP transactions in accordance with the Accounting Handbook.

Guiding Principles

- Inter-Contractor Purchases expedite the purchase of necessary special or unique services or expertise from other authorized DOE contractors.
- Contractors have a responsibility to periodically assess the use of ICP transactions and report to DOE any inappropriate uses.

■ Background

The Department of Energy Acquisition Regulation requires that a contractor's purchasing system make use of effective competitive techniques in obtaining the services and expertise necessary to meet its mission needs.

The Department's ICP process evolved to expedite the acquiring of unique or specialized services and expertise from other DOE major facilities contractors, thereby reducing lead and delivery time from months to a matter of days. The ICP process, however, was intended for use only in special circumstances (e.g., where services are not readily available from the private sector). Many of the process steps inherent in a normal procurement transaction, such as cost and price analysis, rate verifications, flow-down clauses are eliminated through use of an ICP transaction.

In order to facilitate this type of transaction, the Department developed a process for the inter-office transfer of funds involving, among other things, ICP transactions of \$250,000 or more and a similar process for ICP transactions under \$250,000. Neither of those processes is affected by this guidance.

❑ Definitions

The term **Inter-Contractor Purchase** means a subcontract level purchase transaction between two or more DOE management and operating contractors or site integrating contractors. The transaction is appropriate only as described in this guidance. These transactions tend to be less formal than a subcontract, however, the necessity of establishing a fair and reasonable cost for performance and the necessity of effectively administering the transaction remain. Inter-Contractor Purchases as used in this Guide Chapter Letter include transactions known by the following names, among others: Inter-office Work Orders, Integrated Contractor Order, Memorandum Purchase Order, Integrated Contractor Requisitions.

The term **Contractor** means a management and operating contractor or other major site or facilities contractor which is a party to an ICP transaction.

❑ Guidance

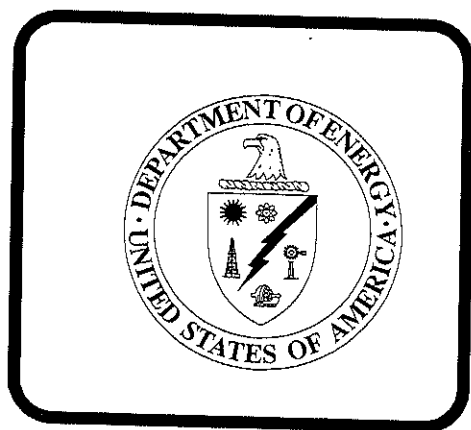
Contracting Officers shall ensure that the contractor's approved procurement system provides adequate management control and oversight relating to the use of ICPs, consisting of the following principles:

- An ICP transaction is used only if the following criteria are met: (a) the performing contractor has special or unique experience or equipment to perform work not readily available from the private sector; (b) the nature of the work is consistent with the scope of the performing contractor's contract; and (c) any effort subcontracted by the performing contractor is incidental to the effort.

- It is the requesting contractor's responsibility to ensure that the use of an ICP is at a fair and reasonable cost or price and properly administered.
- For ICP transactions expected to exceed \$250,000, the requesting contractor shall appropriately document compliance with the criteria of A 1. above and the fairness and reasonableness of the proposed cost or price. ICPs expected to exceed \$1,000,000 shall be documented and submitted to the DOE contracting officer for written consent prior to the issuance of the proposed ICP.
- Upon receipt of an appropriately documented contractor's request to issue an ICP expected to exceed \$1,000,000, the contracting officer will either provide written consent to issue the ICP or require that the acquisition be processed as a normal purchase in accordance with the contractor's purchasing systems and methods. The consideration and disposition should occur within two working days of receipt of the request.
- The contractor should periodically assess the adequacy of its control system, determining whether ICPs were used in an appropriate manner and are being effectively performed. The assessment is subject to validation by the DOE/NNSA field activity that has cognizance over the contractor. The contractor shall promptly notify the DOE contracting officer of any ICP transaction found to be inconsistent with these guidelines.

A contractor's inappropriate use of an ICP may be the basis for lowering the threshold for prior written consent of DOE then in effect and may result in the disallowance of costs incurred that are in excess of those that would have been incurred had the transaction been handled appropriately.

Federal Financial Assistance Opportunities



**At The
Department of Energy**

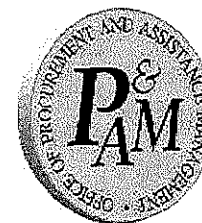


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What is the Purpose of this Guide?

This Guide is intended to help those interested in pursuing financial assistance opportunities at the Department of Energy. It will explain the nature of financial assistance including how it is different from acquisition. It will identify sources of information about DOE financial assistance, compare the roles of various DOE personnel, and identify the major offices that sponsor and award financial assistance at the Department of Energy.

It is intended that this Guide serve as a "how to" booklet for those interested in obtaining Financial Assistance awards at the Department of Energy. There are other Guides which may be of interest or use. For example, the Office of Science has a *Grant Application Guide* for those interested in their program. It is available on the Internet at <http://www.sc.doe.gov/production/grants/grants.htm> or in hard copy. DOE is increasingly using the Internet as an information tool and you will see references to these resources throughout this booklet. All DOE Program Offices and Contracting Offices maintain Home Pages identifying available solicitations. Solicitations are DOE requests for applications.

What is the Purpose of Federal Financial Assistance?

The Federal Grant and Cooperative Agreement Act requires agencies to distinguish procurement relationships from assistance relationships and establishes Government wide criteria for selecting the appropriate legal instrument.

The Act prescribes the use of a procurement contract whenever the principle purpose of the instrument is the acquisition, by purchase, lease or barter, of property or services for the direct benefit of the Federal Government.

It prescribes the use of a grant or cooperative agreement whenever the principle purpose of the relationship is the transfer of money, property or services to a recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

It distinguishes grants from cooperative agreements by providing that a grant must be used when there is to be no substantial involvement between the recipient and the Federal Government and that a cooperative agreement must be used when substantial involvement is anticipated between the Federal Government and the recipient.

Use of Competition

DOE's policy is to solicit financial assistance applications in a manner which provides the maximum amount of competition feasible. A list of DOE's major program activities can be found in the *Catalog of Federal Domestic Assistance*. The Catalog is published by the General Services Administration and provides information on assistance programs throughout the Federal Government.

Throughout the year, DOE issues numerous program solicitations. Program Offices may also issue broad-based solicitations on an annual basis. These broad based solicitations may have multiple response dates. Solicitations are announced through *Federal Register* notices and they are posted to the Program and Awarding Office Home Pages. All solicitations may be viewed through DOE's Industry Interactive Procurement System (IIPS) at <http://e-center.doe.gov>

Merit Review of Financial Assistance

The DOE Financial Assistance Regulation, at 10 CFR 600.13, provides that financial assistance be awarded through a merit-based selection process. Merit review means a thorough, consistent, and independent examination of applications based on

pre-established criteria by persons who are independent of those individuals submitting the application and who are knowledgeable in the field of endeavor for which assistance is requested. All discretionary financial assistance applications, including noncompetitive applications and unsolicited proposals, receive merit review. Such reviews assure that DOE funded projects are of the highest possible merit and benefit to the public.

Merit review is often used in conjunction with program policy evaluation factors to provide a sound basis for selection decisions. Examples of program policy factors are: geographic distribution of awards; diversity in type and size of recipients; diversity of methods, approaches, or kinds of work; and selection of projects which are complementary to other DOE programs or projects.

DOE's Merit Review Handbook can be found at <http://professionals.pr.doe.gov/> Click on "Regulations and Guidance" under the Financial Assistance banner.

Financial Assistance Regulations

The DOE Financial Assistance Regulations are published as Part 600 of Title 10 of the Code of Federal Regulations. It may be viewed at <http://professionals.pr.doe.gov> Click on

“Regulations and Guidance” under the Financial Assistance banner. Many aspects of financial assistance are uniform throughout the Government and are set forth in OMB Circulars which may be viewed at

<http://www.whitehouse.gov/omb/circulars/index.html> Financial assistance administrative procedures are found in the following OMB Circulars:

- A-102, Grants and Cooperative Agreements with State and Local Governments; and,
- A-110, Uniform Administrative Requirement for Grants and Agreement with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations.

There also are Government-wide financial assistance cost principles which list the types of costs which may or may not be reimbursed under a Federal award. Federal rules on cost principles are found in the following OMB Circulars:

- A-21, Cost Principles for Educational Institutions;
- A-87, Cost Principles for State, Local and Indian Tribal Governments; and,
- A-122, Cost Principles for Non-Profit Organizations.

Cost principles for commercial organizations are

found at Subpart 31.2 of the Federal Acquisition Regulation. Copies of the regulations may be ordered from the Government Printing Office by calling (202) 512-1803.

Financial Assistance Statistics

Actions & Dollars in FY 2002

Type of Recipient	Awards	\$(000s)
State and Local Governments	700	383,173
Educational Institutions	2,624	809,504
Commercial/Individuals	1,023	442,210
Other	536	225,143
TOTAL	4,883	\$1,860,030

Financial Assistance Programs

Office of Science (formerly Energy Research)	\$ 811,515
Fossil Energy R&D	209,930
Renewable Energy Research and Development	108,536
Weatherization Assistance for Low-Income	226,924
Conservation R&D	74,501
Energy Related Inventions	40,751
Technology Development for Environmental Management	50,703
All Other Programs	337,170
TOTAL	\$ 1,860,030

What about Programs for Small Business?

DOE encourages the participation of small businesses including small, disadvantaged businesses in its financial assistance programs. There are several programs designed specifically for small business participation. Two are the Small Business Innovative Research Program and the Small Business Technology Transfer Program. These programs are managed by the Office of Science. Office of Science solicitations are on the Internet at <http://www.sc.doe.gov/sbir> or you may telephone 301-903-1414. Another program with awards primarily to small businesses is the Inventions and Innovations Program. This program is managed by the Office of Energy Efficiency and Renewable Energy and its solicitations are at <http://www.oit.doe.gov/inventions/> or you may call (800) 862-2086.

What are Unsolicited Proposals?

If you have a unique or innovative idea which you think has program merit but it does not appear responsive to any existing solicitation, you may submit an unsolicited proposal. An unsolicited proposal is an application for support of an idea, method, or approach, which is submitted by individuals, businesses, and organizations solely on

the proposer's initiative, rather than in response to a Government solicitation. Funding of an unsolicited proposal is considered a noncompetitive action. Unsolicited proposals should be submitted to the Unsolicited Proposal Coordinator at the National Energy Technology Laboratory at the Pittsburgh, PA. address at page 24. A Guide for the submission of such proposals is contained on their Home Page at <http://www.netl.doe.gov/business/index.html> Those without Internet access may call (412) 892-4524 to request a copy.

How Can You Find Information on the Availability of Financial Assistance?

As a public service, the General Services Administration publishes a *Catalog of Federal Domestic Assistance* which describes most Federal financial assistance programs. It may be ordered by calling (202) 708-5126. It may be viewed on the Internet at <http://www.fdac.gov>

DOE maintains a Home Page with sections describing each Program Office. The Home Page is the fastest, easiest way to obtain information about DOE's financial assistance programs. It also contains links to our financial assistance awarding offices. The DOE Home Page is at <http://www.energy.gov/> When first accessing the

DOE Home Page, select the "A - Z Index" icon at the left side of the screen and then select the "O" for "Offices" icon. This will provide you with a list of program and support offices in our Washington, D.C. Headquarters and field locations. From here, select Home Pages of the offices that are of interest to you. It is suggested that you look at the Office of Science Home Page. That Home Page includes a helpful *Grant Application Guide*. You might also visit the Office of Procurement and Assistance Home Page. This page includes a financial assistance section which is at <http://professionals.pr.doe.gov/>

At the Energy Home Page, chose the "A - Z Index" and look under "O" for Offices and under "Operations, Field, and Regional Offices" to see a list of DOE's Field Offices and their Home Pages. All DOE Field Offices have listings of their solicitations and staff contacts. We suggest that you include our Chicago, Oakland, National Energy Technology Laboratory, and Golden offices in your review of Field Office Home Pages. The Chicago and Oakland Offices serve as Centers of Excellence for the award of grants and cooperative agreements for the Office of Science. The National Energy Technology Laboratory awards primarily Fossil Energy financial assistance. Golden makes awards primarily for Energy Efficiency and Renewable Energy. Energy Efficiency uses other offices

including Chicago, National Energy Technology Laboratory, Headquarters, Idaho, and Oak Ridge. For those without Internet access, a listing of these offices is included at the "What Offices Award Financial Assistance?" section near the back of this booklet.

The Office of Small and Small Disadvantaged Business, within the Office of Economic Impact and Diversity, serves as an advocate of small business interests. Their Home Page may be found at <http://www.hr.doe.gov/ed/osdbu/osdbu.html> For those interested in acquisition opportunities, the Office of Economic Impact and Diversity also publishes an annual *Forecast of DOE Contracting and Subcontracting Opportunities*. It is available at the Internet address above, click on the "Forecast" icon on the left, or you may call (202) 586-7377 to request a paper copy.

What are the Roles of DOE Personnel?

Program personnel

Personnel in DOE Program Offices have the major responsibility for planning and managing DOE's financial assistance programs. Program personnel are subject matter specialists regarding the scope of the grant work. Oversight of a research grant in a scientific area, for example, would be assigned to a

program office person with scientific training. This person is generally referred to as a Contracting Officer's Technical Representative.

Contracting Personnel

Grants and cooperative agreement awards are processed and administered by contracting personnel located either in the Office of Headquarters Procurement Services or in one of the DOE Field Offices.

A Contracting Officer is the only Government representative who can authorize, in writing, the incurrence of costs in connection with any work to be charged to the Government. You should ensure that anyone encouraging you to perform work in advance of an award is a Contracting Officer and is specifically authorizing the pre-award expenditure.

Small Business Program Managers

Each Program Office and Contracting Activity has a Small Business Program Manager who is trained to assist small businesses. A listing of these individuals is at <http://www.hr.doe.gov/ed/OSDBU/Osdbu.html> Click on the "Small Business Managers" icon on the right side of the screen.

WHAT DOE PROGRAM OFFICES SPONSOR FINANCIAL ASSISTANCE?

This section will briefly describe the major programs offering opportunities to obtain financial assistance funding. It is not all inclusive. A listing of all DOE Program Offices is at <http://www.energy.gov/> under "Offices" in the "A - Z Index" on the left side of the page.

OFFICE OF SCIENCE

The Office of Science is the largest source of financial assistance funding in DOE. Their Home Page at <http://www.sc.doe.gov/> contains program descriptions, a *Grant Application Guide*, forms, staff contacts and listings of available solicitations. Click on the "Grants and Contracts" icon on the left.

The Office of Science requires formal applications for financial assistance be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: <http://www.pr.doe.gov> IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of each Notice that provide the appropriate forms in

PDF fillable format that are to be submitted through IIPS. All information submitted through IIPS must be in PDF format. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: HelpDesk@e-center.doe.gov or you may call the help desk at: (800) 683-0751. Further information on the use of IIPS by the Office of Science is available at: <http://www.sc.doe.gov/production/grants/grants.html>.

The following program descriptions identify scientific and technical areas of interest to the Office of Science.

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. It is divided into the following Divisions:

- (a) Materials Sciences Program
Contact: (301) 903-3427
- (b) Chemical Sciences Program
Contact: (301) 903-5804
- (c) Geosciences Program
Contact: (301) 903-4061
- (d) Energy Biosciences Program
Contact: (301) 903-2873

2. High Energy and Nuclear Physics

This program supports about 90% of the U.S. efforts in high energy and nuclear physics. The program is divided into the following specialties:

- (a) High Energy Physics Program
Contact: (301) 903-3624
- (b) Nuclear Physics (Including Nuclear Data)
Program Contact: (301) 903-3613

3. Advanced Scientific Computing Research

This program fosters and supports fundamental research in advanced computing research (applied mathematics, computer science and networking), and operates supercomputer, networking, and related facilities to enable the analysis, modeling, simulation, and prediction of complex phenomena important to the Department of Energy.

- (a) Mathematical, Information, and Computational Sciences
- (b) Applied Mathematics
- (c) Computer Science
- (d) Networking
Program Contact: (301) 903-5800

4. Fusion Energy Sciences

The mission of the Fusion Energy Sciences program is to advance plasma science, fusion science, and fusion technology - the knowledge base needed for an economically and environmentally attractive fusion energy source. This program fosters both applied and basic research and emphasizes international collaboration to accomplish this mission.

(a) Research Division

Contact: (301) 903-4095

(b) Facilities and Enabling Technologies Division

Contact: (301) 903-3068

5. Biological and Environmental Research Program

For over 50 years the Biological and Environmental Research (BER) Program has been investing to advance environmental and biomedical knowledge connected to energy. The BER program provides fundamental science to underpin the business thrusts of the Department's strategic plan. Through its support of peer-reviewed research at national laboratories, universities, and private institutions, the program develops the knowledge needed (1) to identify, understand, and anticipate the long-term health and environmental consequences of energy production, development, and use, and (2) to develop biology based solutions that address DOE and National needs.

(a) Life Sciences Research

Program Contact: (301) 903-5468

(b) Medical Applications and Measurement Science

Program Contact: (301) 903-3213

(c) Environmental Remediation

Program Contact: (301) 903-4902

(d) Climate Change Research

Program Contact: (301) 903-3281

6. Energy Research Analyses

This program supports energy research analyses of the Department's basic and applied research activities. Specific objectives include assessments to identify any duplication or gaps in scientific research activities, and impartial and independent evaluations of scientific and technical research efforts. Program Contact: (202) 586-9942

7. Experimental Program to Stimulate Competitive Research

The objective of this program is to enhance the capabilities of certain states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. It is anticipated that only a limited number of new competitive research grants will be awarded under this program due to prior commitments to ongoing grant projects. Program Contact: (301) 903-3427

OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY

This Office is one of the largest financial assistance awarding offices. It has major state assistance programs such as the Weatherization and the State

Energy Programs as well as discretionary project grants open to all applicants.

The Office of Energy Efficiency and Renewable Energy (EE) formulates and directs programs designed to increase the production and utilization of renewable energy and improve the energy efficiency of the transportation, buildings, industrial, and power sectors through support of research, development, and technology transfer activities. These programs include basic and applied research in fields of scientific inquiry that can provide a general technology base which the private sector will be able to use for developing advanced renewable and energy efficiency applications and moving these technology applications into the marketplace. EE programs encompass near-, mid-, and long-term research projects. EE also has responsibility for administering energy efficiency-oriented assistance programs which operate through State and local governments. EE programs are conducted on a national basis with the assistance of DOE field offices, EE Regional Offices, and national laboratories. These programs are implemented through a combination of DOE laboratories, academic institutions, private contractors, and other Federal, State and local government agencies.

EE maintains a Home Page at
<http://www.eere.energy.gov/>

OFFICE OF FOSSIL ENERGY

The Office of Fossil Energy carries out the majority of its research and development program by offering financial assistance awards to private companies, universities, State and local governments, and other research institutions.

Topics span a broad range of innovative, pre-commercial technologies for fossil fuel production, delivery and use, including (1) cleaner and more fuel-efficient electric power generation technologies, (2) more effective environmental control systems, including innovative greenhouse gas reduction technologies, (3) improved methods for locating and producing petroleum and natural gas, (4) ways to strengthen the reliability and safety of key fossil fuel delivery systems such as natural gas pipelines, and (5) the production of new forms of clean fuels from coal and natural gas. Undergirding many of these programs are fundamental research efforts to develop new materials, cutting-edge computational

science capabilities, and enhanced instrumentation and controls. The Office also works with the fossil fuel industry and with other Federal, State, and local governments to reduce the environmental impact of exploration, production and processing technologies and to minimize the cost of effective environmental protection and compliance.

The Fossil Energy research and development program is carried out principally through the National Energy Technology Laboratory (NETL) with offices in Pittsburgh, PA, and Morgantown, WV. Financial assistance opportunities can be found on Fossil Energy web sites at:

<http://www.fossil.energy.gov/business> and <http://www.netl.doe.gov/business>. NETL uses the DOE Industry Interactive Procurement System (IIPS) to post solicitations and amendments, receive proposals/applications, and disseminate award information. Entities wishing to participate in these solicitations will need to register at the IIPS website (<http://e-center.doe.gov>).

The Office of Fossil Energy also offers a user test site, the Rocky Mountain Oilfield

Testing Center near Casper, WY, for the petroleum industry to evaluate emerging and developing oilfield technologies. More information on this facility can be obtained at <http://www.rmotc.com>.

A materials research laboratory at Albany, OR, is also part of the Office of Fossil Energy. The Albany Research Center offers a broad suite of capabilities and expertise in wear and corrosion, melting and casting, and the development of new materials. Information on partnership opportunities can be found at <http://www.alrc.doe.gov>.

Information Contacts:

National Energy Technology Laboratory
(800) 553-7681

Rocky Mountain Oilfield Testing Center
(888) 599-2200

Albany Research Center
(541) 967-5851

OFFICE OF ENVIRONMENTAL MANAGEMENT (EM)

This Office was established in 1989 to consolidate, centralize and promote the cleanup of contaminated waste sites and surplus facilities within the DOE complex. EM is responsible for addressing immediate, urgent risks to human health and the environment, as well as managing long-term contamination and safety threats. EM's mission is to manage the nuclear waste and clean up the contamination at DOE sites across the country and to clean up the environmental legacy of U.S. nuclear weapons production and other sources of pollution such as DOE nuclear research. Beyond this mission, EM performs a variety of stabilization, decontamination and decommissioning and technology development activities throughout the nation. EM is responsible for the short and long term disposal and treatment of nuclear and chemical wastes generated during 50 years of nuclear weapons production and nuclear research. EM's Home Page is at <http://www.em.doe.gov/> EM sponsors the Center for Environmental Management Information. The Center is the program's primary information source, with a library of both general and technical documents and videos, an interactive database, and an educational outreach program. The Center Home Page is <http://www.em.doe.gov/public/cemi.html> or they

may be reached at 1 (800) 736-3282 or E mail to eminfo@cimi.org.

EM may make financial assistance awards for applied research and development projects, and cooperative demonstrations in the following program areas:

- (1) Research, Development, Demonstration, Testing and Evaluation, which includes:
 - (i) Groundwater and soils cleanup,
 - (ii) Waste retrieval and waste processing,
 - (iii) Pollution prevention and waste avoidance,
 - (iv) High Level Waste Tank remediation,
 - (v) Decontamination and decommissioning, and
 - (vi) Plutonium disposition and cleanup.
- (2) Supporting Technologies, which include:
 - (i) Robotic technology development,
 - (ii) Characterization and monitoring technology development, and
 - (iii) Separation and transmutation technology development,

Although EM anticipates that there will be few opportunities for new financial assistance awards over the next several fiscal years, financial assistance opportunities that do arise can be found on NETL's web site at <http://netl.doe.gov/business>

OFFICE OF NUCLEAR ENERGY, SCIENCE AND TECHNOLOGY

Nuclear Energy has a number of assistance programs in its Office of Technology.

Nuclear Energy Research Initiative (NERI)

The Department of Energy (DOE) created the Nuclear Energy Research Initiative (NERI) to address and help overcome the principal technical and scientific obstacles to the future use of nuclear energy in the United States. NERI is expected to help preserve the nuclear science and engineering infrastructure within our Nation's universities, laboratories, and industry to advance the state of nuclear energy technology and to maintain a competitive position worldwide. DOE believes that in funding creative research ideas at the Nation's science and technology institutions and companies, solutions to important nuclear issues will be realized, and a new potential for nuclear energy in the United States will emerge.

NERI features a competitive, peer-reviewed, R&D selection process to fund researcher initiated R&D proposals from the universities, national laboratories, and industry. NERI receives guidance from the Nuclear Energy Research Advisory Committee whose primary function is to assist DOE

in effectively carrying out its role in nuclear energy research. The advisory committee consists of expert members from a wide variety of research backgrounds and perspectives.

See the NERI Home Page at <http://neri.ne.doe.gov/>
Other Nuclear Energy assistance activities include the **University Reactor Fuel Assistance and Support Program** and the **University Program**. Information is available at <http://www.nuclear.gov/>

International Nuclear Energy Research Initiative (I-NERI)

The Department of Energy's (DOE) International Nuclear Energy Research Initiative (I-NERI) sponsors innovative scientific and engineering research and development (R&D), in cooperation with participating countries, to address the key issues affecting the future of nuclear energy and its global deployment by improving cost and performance, increasing proliferation resistance, enhancing safety, and improving the waste management of future nuclear energy systems.

The I-NERI activity is enhancing the Department's ability to leverage its research funding with nuclear technology research funding from other countries. The I-NERI program incorporates a competitive selection process, through which symbiotic

collaborations are formed between U.S. and international laboratories, educational institutions, and nuclear industry vendors and operators who have strong, collective motivation to successfully develop and deploy advanced nuclear energy technology. Proposals are formally reviewed and the best potential collaborative projects are selected based on an integrated, peer-review selection process. The specific solicitation work scope and the review, and selection processes are tailored to the terms of each I-NERI agreement.

I-NERI projects are typically authorized for a three-year duration and funded annually. Since program inception, five projects with France, eleven with the Republic of Korea, and one with the Nuclear Energy Agency have been initiated. Discussions on collaboration are ongoing with Brazil, Canada, the European Union, Japan, the Republic of South Africa, and the United Kingdom. Agreements are expected to be completed with Brazil, Canada, the European Union and Japan in FY 2003, with the remaining agreements being completed in FY 2004.

Information on the I-NERI projects can be found on the I-NERI web page at <http://www.nuclear.gov>

Nuclear Energy Plant Optimization (NEPO)

The Nuclear Energy Plant Optimization (NEPO) Program is a U.S. Department of Energy (DOE) research and development (R&D) program focused on the performance of currently operating U.S. nuclear power plants. The primary areas of focus for the R&D program are plant aging and optimization of electrical production. The NEPO Program is also a public-private R&D partnership with equal or greater matching funds coming from industry.

The NEPO Program was developed based on the *Joint DOE-EPRI Strategic Research and Development Plan to Optimize U.S. Nuclear Power Plants, Volume I, dated October 17, 2000*. This strategic plan, prepared in 1999 and revised in 2000, served as the foundation for the first three years of the program. Building on the success of the program to date, the NEPO Program will focus on the following areas in FY 2003:

- Increases in electrical generation capability from existing nuclear power plants;
- Continued improvement in average industry capacity factors; and
- Contribute to the development of breakthrough technologies to ensure the long-term, efficient operation of these vital energy facilities.

This refinement in program objectives also helps to align the NEPO Program with the recommendations and perspective of the National Energy Policy to increase domestic energy supply and to expand the role of nuclear energy in the U.S.

NEPO will also feature a competitive, peer-reviewed, R&D selection process in FY 2003. The Nuclear Energy Research Advisory Committee oversees the program to advise DOE as to the effectiveness of the NEPO program. Information about the NEPO program is available at <http://www.nepo.ne.doe.gov>

OFFICE OF ECONOMIC IMPACT AND DIVERSITY (ED)

This Office does not, itself, issue a significant number of financial assistance awards. It is, however, the ombudsman for small and small, disadvantaged businesses as well as the historically black colleges and universities community.

Their Home Page may be found at <http://www.hr.doe.gov/ed/index.html> A list of Small Business Managers in each DOE Office is at <http://www.hr.doe.gov/ed/osdbu/sbdir.htm>

What DOE Offices Award Financial Assistance?

The following DOE contracting offices handle the majority of DOE's financial assistance. Some perform these services primarily for certain program offices. These relationships are indicated. Each office maintains a Home Page with its solicitations.

The Centers of Excellence for the award of financial assistance for the Office of Science are:

Chicago Operations Office

9800 South Cass Avenue

Argonne, IL 60439

(630) 252-2090

<http://www.ch.doe.gov/business>

Oakland Operations Office

Financial Assistance Center

1301 Clay Street, Room 700N

Oakland, CA 94612-5208

(510) 637-1894

http://www.oak.doe.gov/Mbf/Fac/Mbf_FacHome_WF.html

The following office awards and administers financial assistance primarily for the Office of Energy Efficiency and Renewable Energy.

Golden Field Office

1617 Cole Boulevard

Golden, CO 80401

(303) 275-4748

<http://www.golden.doe.gov/>

The following office awards and administers financial assistance primarily, but not exclusively, for the Office of Fossil Energy. It has 2 locations.

National Energy Technology Laboratory
PO Box 880
Morgantown, WV26507-0880
Phone (304) 285-4051
and
626 Collins Mill Rd.
PO Box 10940
Pittsburgh, PA 15236-0940
Phone 412 386-6181

They share a single Home Page at
<http://www.netl.doe.gov/business/index.html>

The following offices also award and administer financial assistance.

Albuquerque Operations Office
Contracts & Procurement Division
P.O. BOX 5400
Albuquerque, NM 87185-5400
(505) 845-5777
<http://www.doeal.gov/cpd/default.htm>

Idaho Operations Office
850 Energy Drive, MS 1221
Idaho Falls, ID 83401-156
(208) 526-3737
<http://www.id.doe.gov/doeid/PSD/proc-div.html>

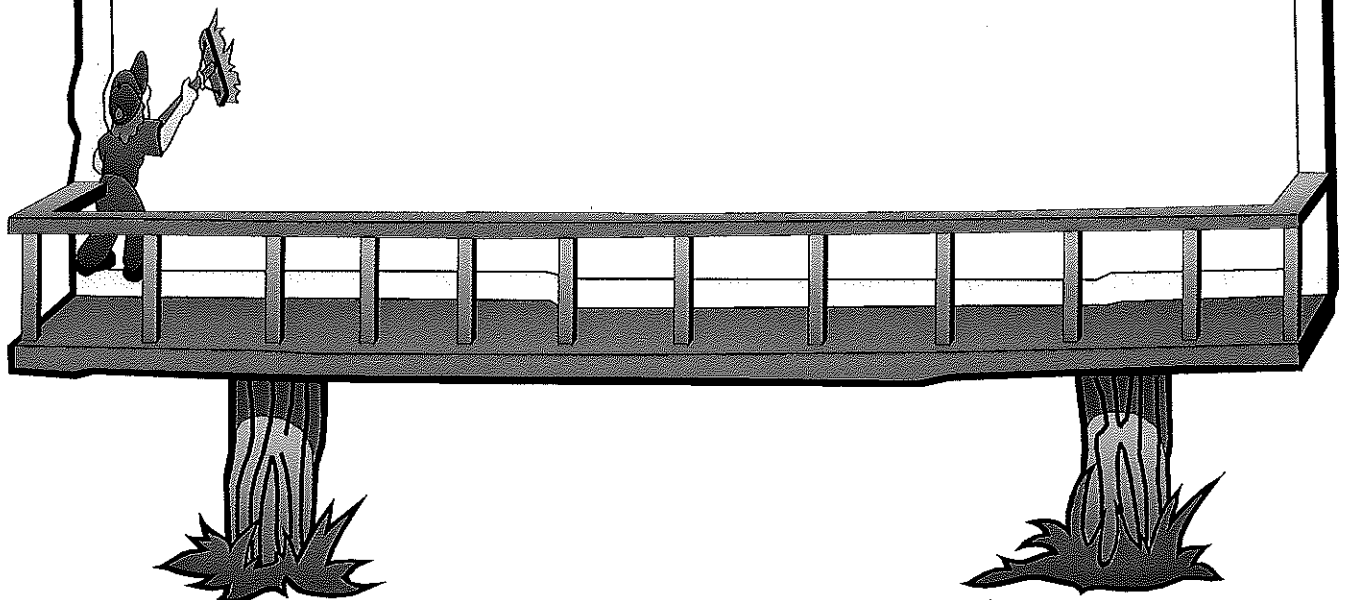
Headquarters Office of Procurement Services
ME-64
1000 Independence Avenue SW
Washington, D.C. 20585
(202) 287-1500
<http://www.pr.doe.gov/>



Headquarters Policy Flash

FLASH 2003-10

DATE: April 3, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management
SUBJECT: **Revised Acquisition Guide Subchapter 3.1 "Procurement Integrity"
and the Procurement Integrity Brochure**
SUMMARY: The purpose of this Flash is to announce the reissuance of
Acquisition Guide subchapter 3.1, entitled "Procurement Integrity" and
the Procurement Integrity Brochure.



FLASH 2003-10

April 3, 2003

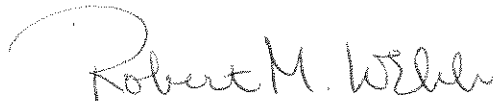
DISCUSSION

A new section entitled "Going Beyond the Procurement Integrity Act" was added to the Guide subchapter 3.1 "Procurement Integrity" and the brochure. This section stresses the importance of being aware of the potential for procurement integrity issues as early as possible in the acquisition process. It reminds Government personnel that problems that may arise when there are inappropriate releases of procurement sensitive information regarding future procurements.

Program offices should coordinate with the Contracting Office early in the acquisition planning stage in order to avoid any procurement integrity violations, including improper release of procurement sensitive information.

Note: The revised content in the brochure is now available on the professionals homepage website to view at <http://professionals.pr.doe.gov>. Upon receiving the brochure in its final format, we will update the homepage version. We have ordered, and will maintain a stock of, printed copies of the brochure for now.

Questions concerning the revised guide and the brochure should be addressed to Steve Zvolensky of the Office of Procurement and Assistance Policy at (202) 586-5936.



Robert M. Webb,
Acting Director

cc:
PPAG Members

Procurement Integrity

What You Need to Know As A Federal Employee

U.S. Department of Energy
Office of Procurement & Assistance Management

What is Procurement Integrity?

The Department of Energy, like most federal agencies, purchases many products and services from the private sector. To preserve the integrity of the Federal procurement process and assure fair treatment of offerors and contractors, laws govern the procurement process and the manner in which federal and contractor personnel conduct business with each other. One of these statutes is Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), often referred to as the *Procurement Integrity Act*. This Act prohibits certain activities by personnel involved in the procurement process. The Federal Acquisition Regulation (FAR), at Section 3.104, sets forth the regulations that implement the provisions of the Procurement Integrity Act.

The Procurement Integrity Act addresses various activities by:

- *Current Federal employees*
- *Certain former Federal Employees.*
- *Bidders and Offerors.*
- *Other personnel involved in agency procurements and contracts.*

This brochure is intended to act as a primer for all DOE employees on issues related to procurement integrity. As such, not all statutory or regulatory details are included here. Employees should consult their procurement counsel to discuss detailed information and procedures in those areas that may affect them personally in procurements:

- *Inappropriate disclosure of information at any point in the acquisition process, beginning when agency needs are established.*
- *Avoiding making Government decisions without authority.*

All federal employees should also be familiar with other statutes and regulations that set forth the standards of conduct for all Federal employees, including those involved in procurements. The Office of the Assistant General Counsel for General Law at Headquarters or the local ethics official in the field can provide further information addressing standards of conduct, including information on:

- *Avoiding personal conflicts of interest.*
- *Taking bribes or accepting certain gratuities.*
- *Using an official Government position to advance personal interests.*
- *Maintaining inappropriate financial interests.*
- *Discussing non-federal employment with bidders or offerors*
- *Accepting compensation from certain contractors after leaving the Government*

Key Provisions

I. Disclosing Procurement Information

For competitive procurements, the personnel identified below shall not, other than permitted by law, knowingly disclose proposal or bid information, or source selection information, before the award of a contract to which the information relates.

- *A current or former official of the United States.*
- *A person who is acting for, or has acted for or on behalf of, the United States with respect to a Federal agency procurement.*
- *A person who is advising, or has advised, the United States with respect to a Federal agency procurement.*

The following information *may not be disclosed* if it hasn't already been disclosed to the public:

Proposal or bid information submitted in connection with a solicitation, including:

- *Cost or pricing data, including indirect costs and direct labor rates.*
- *Proprietary information about manufacturing processes, operations, or techniques identified as such by any contractor.*
- *Information identified by any contractor as "contractor bid or proposed information."*

Source selection information, which is information that is *prepared for use by a Federal agency* for the purpose of evaluating a bid or proposal, including:

- *Bid prices.*
- *Proposed costs or prices.*
- *Source selection plans.*
- *Technical evaluation plans.*
- *Technical and cost or price evaluation of proposals.*
- *Competitive range determinations.*
- *Rankings of bids, proposals, or competitors.*
- *Reports and evaluations of source selection panels, boards, or advisory councils.*
- *Other "source selection information."*

II. Obtaining Procurement Information

For competitive procurements, a person shall not, other than as permitted by law, knowingly obtain proposal or bid information, or source selection information, before the award of a contract to which the information relates. This prohibition applies to the same type of information identified above.

III. Discussing Employment with Contractors

If you are a DOE employee official who is participating personally and substantially in a competitive procurement valued in excess of the simplified acquisition threshold of \$100,000, and you contact or are contacted by a bidder or offeror in that procurement regarding possible non-Federal employment, you are required to:

- *Promptly report the contact in writing to your supervisor and your agency ethics official, and*
- *Either reject the possibility of non-Federal employment or disqualify yourself in writing from further involvement in that procurement, until authorized to resume participation.*

IV. Accepting Compensation from a Contractor

A former DOE employee may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor for a *period of one year* after the date that the former DOE employee:

- *Served, at the time of selection of the contractor or the award of the contract, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team. This applies to contracts over \$10,000,000.*

- *Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000.*
- *Personally made any of the following decisions on behalf of the Federal agency:*

To award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order over \$10,000,000.

To establish overhead or other rates for a contractor on a contract or contracts valued in excess of \$10,000,000.

To approve a contract payment or payments over \$10,000,000.

To pay or settle a claim in excess of \$10,000,000.

This post-employment prohibition does not apply to divisions or affiliates of a contractor that do not produce the same or similar products or services as the entity of the contractor referred to above.

Illustrations

- Two DOE employees who have been friends for many years are talking about their work assignments over lunch. One of the employees is a Contracting Officer's Representative (COR) who is participating in the selection process on a competitive procurement. When asked how the evaluations are proceeding, the COR knows not to discuss the subject since disclosure of source selection information is prohibited.
- A DOE Engineer responsible for drafting a statement of work on a competitive solicitation receives a telephone call from a contractor's business manager who asks when the solicitation will be released. During the conversation, the business manager mentions that a position will be opening in his firm for a Project Engineer and that the DOE employee would be highly qualified for the job. The DOE employee realizes that a Procurement Integrity issue has been raised, rejects the overture and immediately notifies her supervisor and agency ethics official in writing of the contact with the contractor.
- An environmental engineer served on a source selection board that evaluated competitive proposals for a recently awarded contract totaling \$11M. The engineer is considering retiring from the Government to do consulting work for environmental contractors.

Under the Procurement Integrity Act, he is barred from accepting any compensation from the contractor who was awarded that particular contract for a period of 1 year after his work ended on the evaluation board.

What are the Penalties for Violations?

The following criminal penalty applies to knowingly (1) disclosing or (2) obtaining proposal or bid information or source selection information

- *Imprisonment of not more than 5 years and/or a fine.*

The following civil penalties apply to knowingly (1) disclosing or (2) obtaining proposal or bid information or source selection information, (3) discussing non-Federal employment with contractors, or (4) accepting compensation from contractors.

- *Each knowing violation of any of the four key provisions of the Procurement Integrity Act may result in civil penalties up to \$50,000 per violation and administration actions.*
- *Up to \$50,000 per violation plus twice the amount of compensation an individual received or offered for the prohibited conduct.*
- *Up to \$500,000 per violation plus twice the amount of compensation an organization received or offered for the prohibited conduct.*

The following administrative actions apply to knowingly (1) disclosing or (2) obtaining proposal or bid information or source selection information, (3) discussing non-Federal employment with contractors, or (4) accepting compensation from contractors

- *Cancellation of the procurement.*
 - *Disqualification of an offeror.*
 - *Rescission of the contract.*
 - *Suspension or debarment of the contractor.*
 - *Initiation of an adverse personnel action.*
 - *Any other action in the best interest of the Government.*
-

Going Beyond the Procurement Integrity Act

FAR Part 14 states that, before the procurement solicitation, information concerning proposed acquisitions shall be restricted to those having a legitimate interest within the Government. Releases of information shall be made (1) to all prospective bidders, and (2) as nearly as possible at the same time, so that one prospective bidder shall not be given

unfair advantage over another. FAR Part 15 states that, before proposals are received, any exchange of information among all interested parties must be consistent with procurement integrity requirements.

It's never too early in the acquisition process to avoid prejudicial release of information and potential conflicts of interest. Acquisition begins at the point when agency needs are established. All Government employees should understand the adverse impact of inappropriate disclosure of sensitive information regarding future procurements. Early in the acquisition planning process and throughout the development of the Government's requirements, Contracting Officers will advise the program offices and other acquisition personnel of the negative consequences and prejudicial impact of improperly releasing information to potential future offerors. Program offices should make an effort to coordinate with the Contracting Officer early in the acquisition planning stage in order to avoid any procurement integrity violations.

Who Can You Contact for More Information on Procurement Integrity?

- *New employees will be briefed by the Office of Personnel when they first come on board.*
- *Procurement offices provide guidance for any acquisitions in which you DOE personnel are involved.*
- *The Assistant General Counsel for Procurement and Financial Assistance, GC-61, (or local procurement Counsel at field offices) provides advice on questions addressing disclosure of contractor bid or proposal information or source selection information.*
- *The Assistant General Counsel for General Law, GC-77, (or local ethics Counsel at field offices) provides ethics advice on the standards of conduct for employees of the Executive Branch, as well as conduct covered by the Procurement Integrity Act.*

Where Can You Read More About Procurement Integrity?

- *Title 41 of the United States Code, Chapter 423.*
- *The Federal Acquisition regulation (FAR), Section 3.104.*

- *The Department of Energy Acquisition Regulation (DEAR), Section 903.104.*
- *The Department of Energy Acquisition Guide, Chapter 3, Part (1)*

POC: Office of Procurement and Assistance Policy @ 202-586-8182

April 2003



Procurement Integrity



[Reference: 41 U.S.C. 423, FAR 3.104, DEAR 903.104]

❑ Overview

This section discusses the requirements of the Procurement Integrity Act and its impact on Federal employees.

❑ Background

The Department of Energy (DOE), like most federal agencies, purchases many products and services from the private sector.

To preserve the integrity of the Federal procurement process and assure fair treatment of offerors and contractors, laws govern the procurement process and the manner in which federal and offeror personnel conduct business with each other. One of these statutes is Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), often referred to as the Procurement Integrity Act. This Act prohibits certain activities by personnel involved in the procurement process. The Federal Acquisition Regulation, at Section 3.104, sets forth the regulations that implement the provisions of the Procurement Integrity Act.

Guiding Principles

- ◆ The Procurement Integrity Act prohibits certain activities by personnel involved in the procurement process.
- ◆ Procurement Integrity statutes and regulations govern the procurement process and the manner in which government and contractor personnel conduct business with each other.

The Procurement Integrity Act addresses various activities by:

- Current Federal employees.
- Certain former Federal employees.

- Bidders and Offerors.
- Other personnel involved in agency procurements and contracts.

Significant revisions to the Procurement Integrity Act were effective on January 1, 1997, as a result of the Clinger-Cohen Act of 1996. The Procurement Integrity Act reflects procurement activities in four major areas:

- Disclosing bid, proposal or source selection information.
- Obtaining bid, proposal or source selection information.
- Accepting compensation from certain contractors after leaving the Government.
- Discussing non-federal employment with certain bidders or offerors.

In addition to the Procurement Integrity Act requirements, all federal employees should also be familiar with other statutes and regulations that set forth the standards of conduct for all Federal employees, including those involved in procurements. The Office of the Assistant General Counsel for General Law at Headquarters, or the local ethics official in the field, can provide further information addressing standards of conduct, including information on:

- Avoiding personal conflicts of interest;
- Avoiding making Government decisions without authority;
- Inappropriate disclosure of information at any point in the acquisition process;
- Taking bribes on accepting certain gratuities;
- Using an official Government position to advance personal interest; and
- Maintaining inappropriate financial interests;

☐ **Prohibited Activities**

I. Disclosing Procurement Information

For competitive procurements, the personnel identified below shall not, other than as permitted by law, knowingly disclose proposal or bid information, or source selection information, before the award of a contract to which the information relates.

- A person or former official of the United States;
- A person who is acting for, or has acted for on behalf of, the United States with respect to a Federal agency procurement; or
- A person who is advising, or has advised, the United States with respect to a Federal agency procurement.

The following information is procurement sensitive and may not be disclosed if it has not previously been made public:

Proposal or bid information, including:

- Cost or pricing data, including indirect costs and direct labor rates
- Proprietary information about manufacturing process, operations, or techniques identified as such by any contractor
- Information identified by any contractor as "contractor bid or proposal information."

Source selection information, which is information that is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal, including:

- Bid prices.
- Proposed costs or prices.
- Source selection plans.
- Technical evaluation plans.
- Technical and cost or price evaluations of proposals.
- Competitive range determinations.
- Rankings of bids, proposals, or competitors.
- Reports and evaluations of source selection panels, boards, or advisory councils.
- Other "source selection information."

II. Obtaining Procurement Information

For competitive procurements, a person shall not, other than as permitted by law, knowingly obtain bid or proposal information, or source selection information, before the award of a contract to which

the information relates. This prohibition applies to the same type of proposal or bid information, or source selection information identified above.

III. Discussing Employment With Contractors

If you are an agency official who is participating personally and substantially in a competitive procurement valued in excess of the simplified acquisition threshold currently \$100,000, and you contact or are contacted by a bidder or offeror in that procurement regarding possible non-Federal employment, you are required to:

- Promptly report the contact in writing to your supervisor and your agency ethics official, and
- Either reject the possibility of non-Federal employment or disqualify yourself in writing from further involvement in that procurement, until authorized to resume participation.

IV. Accepting Compensation From a Contractor

A former DOE employee may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor for a *period of one year* from the date that the former DOE employee:

- Served, at the time of selection of the contractor or the award of the contract, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team. This applies to contracts over \$10,000,000.
- Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000.
- Personally made any of the following decisions on behalf of the Federal agency:
 - To award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order over \$10,000,000.
 - To establish overhead or other rates for a contractor on a contract(s) valued in excess of \$10,000,000.
 - To approve a contract payment or payments over \$10,000,000.
 - To pay or settle a claim in excess of \$10,000,000.

This post-employment prohibition does not apply to divisions or affiliates of a contractor that do not produce the same or similar products or services as the entity of the contractor referred to above.

☐ **Program Managers**

For purposes of the prohibition described in Section III above, a Program Manager is the DOE individual who is designated by his or her supervisor or higher authority as Program Manager and exercises authority on a day-to-day basis to manage an acquisition program for a system obtained through the acquisition process that has one or more contracts, at least one of which has a value exceeding \$10 million. The Program Manager is generally the person at the lowest organizational level who has the authority to make technical and budgetary decisions on behalf of the Department.

The post-employment restriction also applies to each Deputy Program Manager, who is defined as the individual who normally acts as the Program Manager in the absence of the Program Manager. A system is a combination of elements that function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof. An acquisition program has only one Program Manager and one Deputy Program Manager. An individual who acts in the absence of the Program Manager and Deputy Program Manager is not considered to be within this definition.

☐ **What are the Penalties for Violations?**

The following **Criminal Penalties** apply to knowingly (1) disclosing or; (2) obtaining proposal; or bid information or source selection information.

- Imprisonment of not more than 5 years and/or a fine.

The following **Civil Penalties** apply to knowingly (1) disclosing or; (2) obtaining proposal or bid information or source selection information; (3) discussing non-Federal employment with contractors; or (4) accepting compensation from contractors.

- Each knowing violation of any of the four key provisions of the Procurement Integrity Act may result in civil penalties up to \$50,000 per violation and administration actions.
- Up to \$50,000 per violation plus twice the amount of compensation an individual received or offered for the prohibited conduct.
- Up to \$500,000 per violation plus twice the amount of compensation an organization received or offered for the prohibited conduct.

The following **Administrative Actions** apply to knowingly (1) disclosing or; (2) obtaining proposal or bid information or source selection information; (3) discussing non-Federal employment with contractors; or (4) accepting compensation from contractors.

- Cancellation of the procurement.
- Disqualification of an offeror.

- Rescission of the contract.
- Suspension or debarment of the contractor.
- Initiation of an adverse personnel action.
- Any other action in the best interest of the Government.

☐ **Related Prohibited Conduct**

All federal employees should also be familiar with other statutory and regulatory prohibitions, such as:

- The offer or acceptance of a bribe or gratuity is prohibited. The acceptance of a gift, under certain circumstances, is also prohibited.
- Contacts with an offeror during the conduct of an acquisition may constitute "seeking employment." Government officers and employees are prohibited, and must disqualify themselves, from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment.
- Post-employment restrictions prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for particular matters under an employee's official responsibility.
- The FAR places restrictions on the release of information related to procurements and other contractor information that must be protected {e.g., FAR Part 14 states that information concerning proposed acquisitions shall not be released outside the Government before solicitation except for presolicitation notices, or long-range acquisition estimates, or synopses. Within the Government, such information shall be restricted to those having a legitimate interest. Releases of information shall be made (1) to all prospective bidders, and (2) as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another. FAR Part 15 states that, before proposals are received, any exchange of information among all interested parties must be consistent with procurement integrity requirements. Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.}
- Other laws may prohibit release of information both before and after award.
- Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited.

☐ **Going Beyond the Procurement Integrity Act**

FAR Part 14 states that, before solicitation, information concerning proposed acquisitions shall be restricted to those having a legitimate interest within the Government. Releases of information shall be made (1) to all prospective bidders, and (2) as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another. FAR Part 15 states that, before proposals are received, any exchange of information among all interested parties must be consistent with procurement integrity requirements.

It's never too early in the acquisition process to avoid prejudicial release of information and potential conflicts of interest. It is worthy to note that the acquisition process begins at the point when agency needs are established. All Government employees should understand the adverse impact of inappropriate disclosure of sensitive information regarding future procurements. Early in the acquisition planning process and throughout the development of the Government's requirements, Contracting Officers will advise the program offices and other acquisition personnel of the negative consequences and prejudicial impact of improperly releasing information to potential future offerors. Program offices should make an effort to coordinate with the Contracting Officer early in the acquisition planning stage in order to avoid any procurement integrity violations.

☐ **Receiving Information on Procurement Integrity Issues**

Procurement offices can provide guidance for specific acquisitions in which DOE personnel are involved.

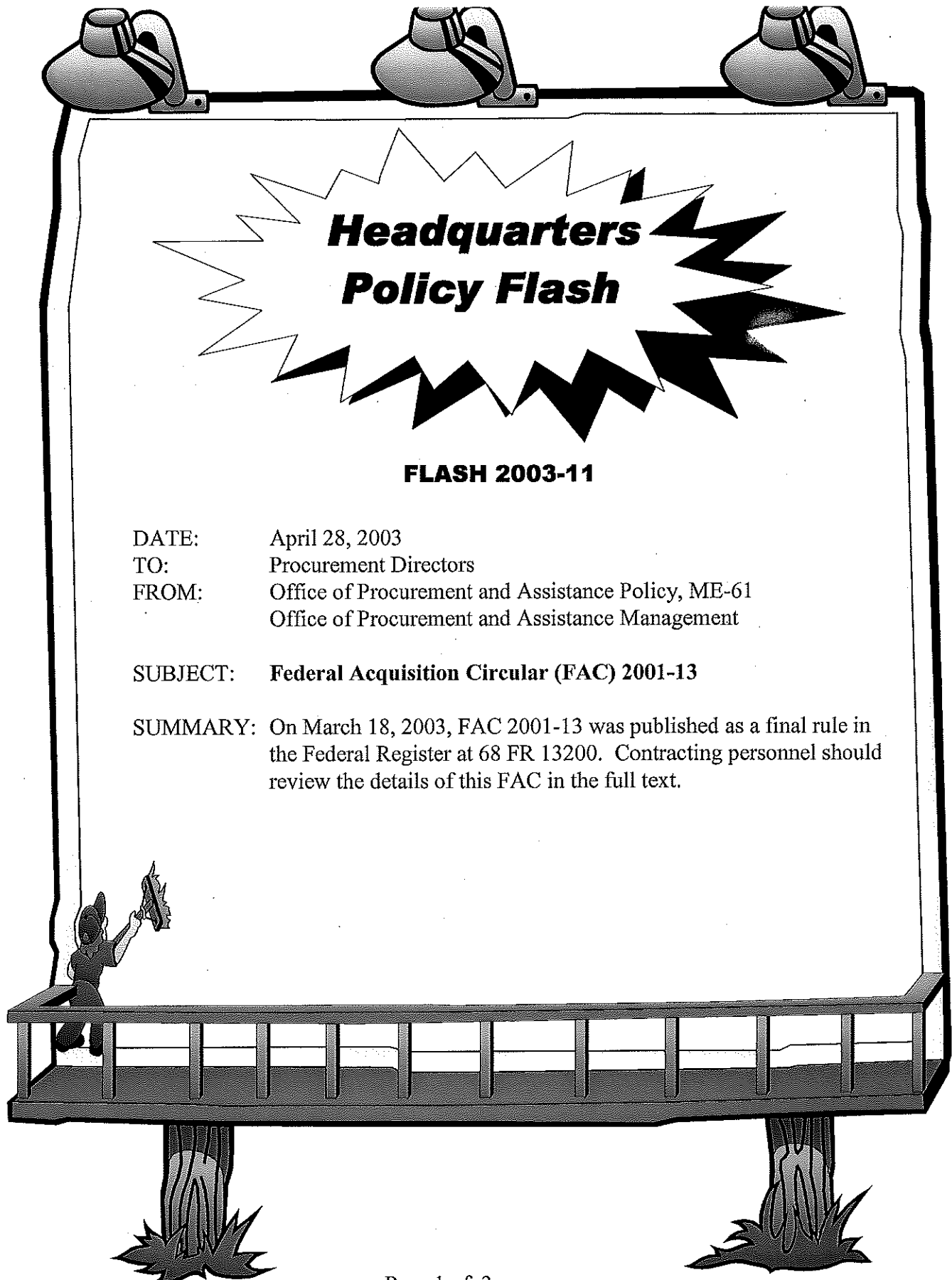
The Assistant General Counsel for Procurement and Financial Assistance at Headquarters and local procurement Counsel at field offices provide advice on questions addressing disclosure of contractor bid or proposal information or source selection information.

The Assistant General Counsel for General Law at Headquarters and local ethics Counsel at field offices provide ethics advice on the standards of conduct for employees of the Executive Branch, as well as conduct covered by the Procurement Integrity Act.

The Office of Procurement and Assistance Policy published a brochure entitled "Procurement Integrity" that summarizes the responsibilities and restrictions associated with procurement integrity. The brochure may be viewed on the DOE homepage at:

[http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/ProcInte/\\$File/ProcInte.pdf](http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/ProcInte/$File/ProcInte.pdf)

or you may order copies of the brochure by calling the office direct at (202) 586-8182.



Headquarters Policy Flash

FLASH 2003-11

DATE: April 28, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular (FAC) 2001-13**

SUMMARY: On March 18, 2003, FAC 2001-13 was published as a final rule in the Federal Register at 68 FR 13200. Contracting personnel should review the details of this FAC in the full text.

FLASH 2003-11
(April 28, 2003)

Federal Acquisition Circular (FAC) 2001-13

The following items are in FAC 2001-13, which was published in the Federal Register on March 18, 2003, at 68 FR 13200. *The effective date for these items is April 17, 2003.* The FAC is available via the internet at <http://www.arnet.gov/far/facsframe.html>

1. Contract Types for Commercial Item Acquisitions (FAR Case 2000-013)

This final rule amends FAR Part 12, Acquisition of Commercial Items, and Part 16, Types of Contracts to explain the application of award fees and performance or delivery incentives for certain commercial items acquisitions.

The rule clarifies how award fee and performance or delivery incentives based solely on factors other than cost may be used where statute prohibits the use of cost-type contracts in conjunction with firm-fixed price (FFP) contracts and fixed-price contracts with economic price adjustment (FP/EPA) without changing the nature of these contracts and requires the use of these contracts to the maximum extent practicable.

2. Performance for U.S. Flag Vessels-Subcontracts for Commercial Items (FAR Case 1999-024)

This final rule makes changes to limit the types of subcontracts for which the waiver of cargo preference statutes is applicable. This rule amends FAR Part 12, Acquisition of Commercial Items, Part 32, Contract Financing, Part 47, Transportation, and Part 52, Solicitation Provisions and Contract Clauses.

FLASH 2003-11
(April 28, 2003)

3. Federal, State, and Local Taxes (FAR Case 2000-016)


This is a final rule that amends FAR Part 29, Taxes, and Part 52, Solicitation Provisions and Contract Clauses, in order to clarify prescriptions for the clauses pertaining to Federal, State, and Local Taxes. The final rule-

- ☞ Deletes the clause at FAR 52.229-5, Taxes-Contracts Performed in U.S. Possessions or Puerto Rico; and
- ☞ Moves the definition of local taxes from 52.229-5 to the clauses at FAR 52.229-3, Federal, State, and Local Taxes, and 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments). In addition, the definition of local taxes is updated by adding U.S. territories and the Commonwealth of the Northern Mariana Islands, which are no longer considered possessions of the U.S.

4. Progress Payment Requests Under Indefinite-Delivery Contracts (FAR Case 2001-006)

This final rule amends FAR Part 32, Contract Financing, and Part 52, Solicitation Provisions and Contract Clauses to require the contractor, under indefinite delivery contracts, to account for and submit progress payment requests subject to each order as if each order constitutes a separate contract, unless otherwise specified in the contract.

Questions concerning this Flash should be directed to Denise Wright at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov


Robert M. Webb, Acting Director
Office of Procurement
and Assistance Policy

cc:
PPAG Members



Federal Register

Tuesday,
March 18, 2003

Part IV

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Chapter 1, et al.
Federal Acquisition Regulations; Final
Rules

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 2001-13;
Introduction**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001-13. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules.

For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001-13 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Contract Types for Commercial Item Acquisitions	2000-013	Moss
II	Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items	1999-024	Klein
III	Federal, State, and Local Taxes	2000-016	De Stefano
IV	Progress Payment Requests	2001-006	De Stefano

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001-13 amends the FAR as specified below:

**Item I—Contract Types for Commercial
Item Acquisitions (FAR Case 2000-013)**

This final rule amends FAR 12.207, 16.202-1, and 16.203-1 to indicate that award fee and performance or delivery incentives based solely on factors other than cost may be used in conjunction with firm-fixed-price (FFP) contracts and fixed-price contracts with economic price adjustment (FP/EPA) without changing the FFP or FP/EPA nature of the contract. A cross reference to these sections is added to FAR 12.207 to ensure clarity of the revisions relative to commercial item acquisitions.

**Item II—Preference for U.S.-Flag
Vessels—Subcontracts for Commercial
Items (FAR Case 1999-024)**

This final rule amends FAR Parts 12, 32, 47, and associated clauses to limit the types of subcontracts for which the waiver of cargo preference statutes is applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems. This final rule also amends FAR Part 12 by adding 10 U.S.C. 2631, Transportation of Supplies by Sea, to the list of laws

inapplicable to subcontracts for the acquisition of commercial items (except for certain subcontracts). FAR Subpart 47.5 and the clause at FAR 52.247-64 do not generally apply to acquisitions by the Department of Defense.

**Item III—Federal, State, and Local
Taxes (FAR Case 2000-016)**

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses pertaining to Federal, State, and local taxes. These clauses, 52.229-3, Federal, State, and Local Taxes; and 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments), are also updated to reflect information previously contained in the clause at FAR 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico. FAR clause 52.229-5 is removed.

**Item IV—Progress Payment Requests
Under Indefinite-Delivery Contracts
(FAR Case 2001-006)**

This final rule amends the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract. The rule is of special interest to contracting officers that administer indefinite-delivery contracts.

Dated: March 12, 2003.

Laura G. Smith,
Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-13 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001-13 are effective April 17, 2003.

Dated: March 10, 2003.

Deidre A. Lee,
Director, Defense Procurement and Acquisition Policy.

Dated: March 3, 2003.

David A. Drabkin,
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: February 28, 2003.

Tom Luedtke,
Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03-6371 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 12 and 16

[FAC 2001-13; FAR Case 2000-013;
Item I]

RIN 9000-AJ03

Federal Acquisition Regulation;
Contract Types for Commercial Item
AcquisitionsAGENCIES: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the use of award fees and performance or delivery incentives in firm-fixed-price contracts and fixed-price with economic price adjustment contracts. These changes are intended to clarify how award fees and performance or delivery incentives may be used in commercial item acquisitions where statute prohibits use of cost-type contracts and requires use of firm-fixed-price contracts and fixed-price contracts with economic price adjustment to the maximum extent practicable.

DATES: *Effective Date:* April 17, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 2001-13, FAR case 2000-013.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 65 FR 83292, December 29, 2000, that proposed to amend FAR 12.207 and Subpart 16.2 to clarify the contract-type requirements for commercial item acquisitions derived from Section 8002(d) of the Federal Acquisition Streamlining Act (FASA) (Pub. L. 103-355). FASA states that agencies must use firm-fixed-price (FFP) contracts and fixed-price contracts with economic price adjustments (FP/EPA) to the maximum extent practicable for

commercial item acquisitions. FASA also prohibits the use of cost-type contracts.

The proposed rule would have amended Part 12 to address pricing mechanisms for acquiring commercial services available on a time-and-materials or labor-hour basis within FAR Part 12 contract-type restrictions. Additionally, the proposed rule contained revisions to FAR 16.202-1 and 16.203-1 to indicate that award fee and performance or delivery incentives based solely on factors other than cost may be used in conjunction with FFP and FP/EPA contracts without changing the FFP or FP/EPA nature of the contract.

The 60-day comment period for the proposed rule ended February 27, 2001. Ten sources submitted comments on the proposed rule. All comments received were considered in the formulation of this final rule. The comments indicated significant confusion concerning the proposed revisions to Part 12 regarding the intended application of the proposed time-and-materials and labor-hour pricing mechanism coverage. Consequently, the FAR Council decided that only the changes associated with using non-cost based award fee and delivery or schedule incentives in conjunction with FFP and FP/EPA contracts should be finalized.

Although this rule does not address the use of time-and-materials and labor-hour contracts for commercial item acquisitions, the Administrator, Office of Federal Procurement Policy, intends to work with the other FAR Council members to develop appropriate revisions to current FAR coverage to address their use, including safeguards that are needed to effectively protect taxpayer interests when these contractual arrangements are used under Part 12.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 12 and 16 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C. 601, *et seq.* (FAC 2001-13, FAR case 2000-013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 12 and 16

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12 and 16 as set forth below:

1. The authority citation for 48 CFR parts 12 and 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF
COMMERCIAL ITEMS

2. In section 12.207, add the following sentence to the end of the paragraph to read as follows:

12.207 Contract type.

* * * These contract types may be used in conjunction with an award fee and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost (see 16.202-1 and 16.203-1).

PART 16—TYPES OF CONTRACTS

3. In section 16.202-1, add the following sentences to the end of the paragraph to read as follows:

16.202-1 Description.

* * * The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

4. In section 16.203-1, redesignate the introductory text as paragraph (a), and paragraphs (a) through (c) as (1) through (3), respectively; and add paragraph (b) to read as follows:

16.203-1 Description.

* * * * *

(b) The contracting officer may use a fixed-price contract with economic

price adjustment in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

[FR Doc. 03-6372 Filed 3-17-03; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 32, 47, and 52

[FAC 2001-13; FAR Case 1999-024; Item II]

RIN 9000-A197

Federal Acquisition Regulation; Preference for U.S.-Flag Vessels— Subcontracts for Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) regarding the applicability of statutory requirements for use of U.S.-flag vessels in the transportation of supplies by sea. The FAR presently waives these requirements for subcontracts for the acquisition of commercial items. This rule would require the use of U.S.-flag vessels under certain subcontracts for commercial items.

DATES: *Effective Date:* April 17, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 2001-13, FAR case 1999-024.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 12, 32, 47, and associated clauses to limit the types of subcontracts for which the waiver of cargo preference statutes is

applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems. This final rule also amends FAR Part 12 by adding 10 U.S.C. 2631 to the list of laws inapplicable to subcontracts for the acquisition of commercial items, except for certain subcontracts, since civilian agencies may buy supplies for use of military departments.

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 65 FR 66920, November 7, 2000. Four respondents submitted public comments during the comment period. These comments were considered in the formulation of the final rule. A summary of the comments and their respective disposition is as follows:

1. One respondent voiced opposition to the rule indicating that (1) neither the statute nor the legislative history grants authority to create an administrative deviation from the explicit requirement to use U.S.-flag vessels in the transportation of supplies bought for the Department of Defense (DoD) either by DoD or a civilian agency; (2) the rule should be considered a major rule under 5 U.S.C. 804; and (3) this rule will have a significant impact on a substantial number of small entities. The Councils did not concur. 41 U.S.C. 430(b), as added by the Federal Acquisition Streamlining Act (FASA) of 1994 (Pub. L. 103-355, Section 8003), requires that the FAR list those laws inapplicable to subcontracts for commercial items, and requires that covered laws as defined in 41 U.S.C. 430(c) be included on that list unless the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt commercial subcontracts from the applicability of the provision (see comment 2). In accordance with this statute, FAR 12.504(a)(10) currently lists 46 U.S.C. 1241(b), with the inapplicability effective May 1, 1996. This rule adds 10 U.S.C. 2631 to the FAR list, because civilian agencies may buy supplies for use of military departments. 10 U.S.C. 2631 is currently listed as inapplicable to commercial items at DFARS 212.504(a)(xxii), with the same exceptions now being incorporated in the FAR. This rule clarifies existing policy and limits the number of allowable waivers. The rule strengthens the Government support for the Cargo Preference statutes. The Office of Information and Regulatory Affairs reviewed the proposed rule before publication and did not declare it to be a major rule under 5 U.S.C. 804.

2. One respondent expressed opposition to the rule considering it to be inconsistent with FASA with respect to commercial item procurements. The respondent states that 10 U.S.C. Sec. 2631 is not specifically enumerated to remain unaffected by Title VIII of FASA, it does not provide for criminal or civil penalties, or contain any provisions that would override the provisions in Title VIII of FASA and, therefore, a written determination of the FAR Council is required to not exempt all commercial item subcontracts from the provisions of 10 U.S.C. Sec. 2631. The FAR Council has made a determination in writing as required by the OFPP Act, 41 U.S.C. 430(b).

3. One respondent expressed concern regarding deletion of contracts awarded using the simplified acquisition procedures in Part 13 from the current list of exceptions to the preference for U.S.-flag vessels. This change was accomplished under FAR case 98-604, and is outside the scope of this case.

4. One respondent expressed concern that the rule does not waive Cargo Preference for commercial subcontracts if the prime contractor is redistributing or reselling without adding value. The Council did not concur. FASA specifically prohibits waiver of laws for subcontracts where the prime does not add value; the subcontractor then is held to all laws applicable to a prime contractor. The rule merely clarifies this portion of the law.

5. One respondent expressed concern regarding the difference between the requirements outlined in the statutes covering DoD and non-DoD cargo. The concern is that extension of the rule to civilian agency acquisitions places an insurmountable burden on Government contractors and subcontractors. The Councils did not concur as FAR 47.503(b)(2) already states that 10 U.S.C. 2631 is applicable if supplies being shipped are for use of military departments. This rule does not expand that applicability of 10 U.S.C. 2631 to other non-DoD cargo, but actually limits application of Cargo Preference, by providing waiver of 10 U.S.C. 2631, if it would otherwise be applicable.

6. One respondent contends that if the proposed rule is not withdrawn, it should be modified to require prime contractors to advise their subcontractors when the statutes apply. The Councils did not concur because the FAR currently requires the prime contractor to notify the subcontractors of any flow-down statutes.

7. Two respondents were concerned that the rule could be read to omit one major exception to cargo preference waivers for subcontracts for commercial

52.213-4 Terms and Conditions—Simplified Acquisitions (Other than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Apr. 2003)

* * * * *

(b)(1) * * *

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

* * * * *

8. Amend section 52.244-6 by revising the section and clause heading, the date of the clause, and paragraph (c)(1)(v) to read as follows:

§ 52.244-6 Subcontracts for Commercial Items and Commercial Components.

* * * * *

Subcontracts for Commercial Items and Commercial Components (Apr. 2003)

* * * * *

(c)(1) * * *

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

* * * * *

9. Amend section 52.247-64 by—

- a. Revising the date of the clause;
- b. Removing "The" from the beginning of the introductory text of paragraph (a) and adding "Except as provided in paragraph (e) of this clause, the" in its place;
- c. Removing the period at the end of paragraph (d) and adding ", except those described in paragraph (e)(4)." in its place;
- d. Removing "and" at the end of paragraph (e)(2);
- e. Removing the period at the end of paragraph (e)(3) and adding "; and" in its place;
- f. Adding paragraph (e)(4);
- g. Revising the date, introductory text, and paragraph (a) of Alternate I; and
- h. Revising Alternate II to read as follows:

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003)

* * * * *

(e) * * *

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

- (i) This contract is—
 - (A) A contract or agreement for ocean transportation services; or
 - (B) A construction contract; or

(ii) The supplies being transported are—
(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

- (1) Contingency operations;
- (2) Exercises; or
- (3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

* * * * *

Alternate I (Apr 2003). As prescribed in 47.507(a)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Except as provided in paragraphs (b) and (e) of this clause, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

* * * * *

Alternate II (Apr 2003). As prescribed in 47.507(a)(3), substitute the following paragraph (e) for paragraph (e) of the basic clause:

(e) The requirement in paragraph (a) does not apply to—

- (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
- (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
- (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(4) Subcontracts or purchase orders under this contract for the acquisition of commercial items unless the supplies being transported are—

(i) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(ii) Shipments in direct support of U.S. military—

- (A) Contingency operations;
- (B) Exercises; or
- (C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.)

[FR Doc. 03-6373 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 29 and 52

[FAC 2001-13; FAR Case 2000-016; Item III]

RIN 9000-AJ39

Federal Acquisition Regulation; Federal, State, and Local Taxes

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the prescriptions for use of clauses relating to Federal, State, and local taxes. In addition, the rule deletes the clause at FAR 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, and updates and moves the definition of "local taxes."

DATES: Effective Date: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 2001-13, FAR case 2000-016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses 52.229-3, Federal, State, and Local Taxes; 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments). In addition, the rule deletes the clause at 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, and moves the definition of "local taxes" from the clause at 52.229-5 to the clauses at 52.229-3 and 52.229-4, and updates the definition by adding U.S. territories and the Commonwealth of the Northern Mariana Islands, which are no longer considered possessions of the United States.

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 67 FR 38552, June 4, 2002. Two sources

submitted comments in response to the proposed rule. The first respondent recommended adding the word "contingency" in 29.401-3(b) for clarity. The Councils adopted the intent of the respondent's recommendation for paragraph (b) for clarity and consistency with the clause language at 52.229-4(c). Another commenter recommended that the FAR be further amended to address payment of property tax on equipment rented or leased by the Government. That comment was outside the scope of the case and no action was taken.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing language.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 29 and 52

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,
Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 29 and 52 as set forth below:

1. The authority citation for 48 CFR parts 29 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 29—TAXES

2. In section 29.305, revise paragraph (b)(1) to read as follows:

29.305 State and local tax exemptions.

* * * *

(b) * * *

(1) Under a contract containing the clause at 52.229-3, Federal, State, and Local Taxes, or at 52.229-4, Federal,

State, and Local Taxes (State and Local Adjustments), in accordance with the terms of those clauses.

* * * *

3. Revise the heading and text of section 29.401-3 to read as follows:

29.401-3 Federal, State, and local taxes.

(a) Except as provided in paragraph (b) of this section, insert the clause at 52.229-3, Federal, State, and Local Taxes, in solicitations and contracts if—

(1) The contract is to be performed wholly or partly within the United States, its possessions or territories, Puerto Rico, or the Northern Mariana Islands;

(2) A fixed-price contract is contemplated; and

(3) The contract is expected to exceed the simplified acquisition threshold.

(b) In a noncompetitive contract that meets all the conditions in paragraph (a) of this section, the contracting officer may insert the clause at 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments), instead of the clause at 52.229-3, if the price would otherwise include an inappropriate contingency for potential postaward change(s) in State or local taxes.

29.401-4 and 29.401-5 [Removed]

29.401-6 [Redesignated as 29.401-4]

4. Remove sections 29.401-4 and 29.401-5, and redesignate section 29.401-6 as 29.401-4.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.229-3 as follows:

a. Revise the date of the clause;

b. Revise paragraph (a) introductory text; and

c. In paragraph (a), amend the definitions "Contract date", "All applicable Federal, State, and local taxes and duties", "After-imposed Federal tax", and "After-relieved Federal tax" by removing "as used in this clause," and placing these definitions in alphabetical order; and add, in alphabetical order, the definition "Local taxes".

The revised and added text read as follows:

52.229-3 Federal, State, and Local Taxes.

* * * *

Federal, State, and Local Taxes (April 2003)

(a) As used in this clause—

* * * *

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands,

if the contract is performed wholly or partly in any of those areas.

* * * *

(End of clause)

6. Amend section 52.229-4 as follows:

(a) Revise the section and clause headings; and the introductory paragraph;

(b) Revise paragraph (a) introductory text;

(c) In paragraph (a), place the definitions "Contract date", "All applicable Federal, State, and local taxes and duties", "After-imposed tax", "After-relieved tax", and "Excepted tax" in alphabetical order and amend by removing "as used in this clause;" and add, in alphabetical order, the definition "Local taxes".

The revised and added text read as follows:

52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).

As prescribed in 29.401-3, insert the following clause:

Federal, State, and Local Taxes (State and Local Adjustments) (April 2003)

(a) As used in this clause—

* * * *

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

* * * *

52.229-5 [Removed and reserved]

7. Remove and reserve section 52.229-5.

8. Amend section 52.229-10 as follows: a. Amend the introductory text by removing "29.401-6(b)" and adding "29.401-4(b)" in its place; b. Revise the date of the clause; and c. Amend paragraph (h) by removing "29.401-6(b)(1)" and adding "29.401-4(b)(1)" in its place.

The revised text reads as follows:

52.229-10 State of New Mexico Gross Receipts and Compensating Tax.

* * * *

State of New Mexico Gross Receipts and Compensating Tax (April 2003)

* * * *

[FR Doc. 03-6374 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 2001-13; FAR Case 2001-006; Item
IV]

RIN 9000-AJ23

Federal Acquisition Regulation;
Progress Payment Requests Under
Indefinite-Delivery Contracts

AGENCIES: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council
(Councils) have agreed on a final rule
amending the Federal Acquisition
Regulation (FAR) to require, under
indefinite-delivery contracts, the
contractor to account for and submit
progress payment requests under
individual orders as if each order
constitutes a separate contract, unless
otherwise specified in the contract.

DATES: Effective Date: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: The
FAR Secretariat, Room 4035, GS
Building, Washington, DC, 20405, (202)
501-4755, for information pertaining to
status or publication schedules. For
clarification of content, contact Mr.
Ralph De Stefano, at (202) 501-1758.
Please cite FAC 2001-13, FAR case
2001-006.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed to amend
the Federal Acquisition Regulation
(FAR) to require, under indefinite-
delivery contracts, the contractor to
account for and submit progress
payment requests under individual
orders as if each order constitutes a
separate contract, unless otherwise
specified in the contract.

DoD, GSA, and NASA published a
proposed rule in the *Federal Register* at
66 FR 57294, November 14, 2001. Eight
respondents submitted public
comments. These comments are
discussed below. The Councils
concluded that the proposed rule
should be converted to a final rule, with
only minor editorial changes made to
the proposed rule.

1. *Time requirement.* One respondent
asked if the proposed rule change would
have a time requirement other than 60
days, and if so, how that change would
effect outside agencies. This question
referenced an existing policy addressing
progress schedules and reports.

Councils' response: No change. The
proposed change focuses on how
progress payments will be billed and
processed on delivery orders under
indefinite-delivery type contracts. It
does not impact any existing
timeframes.

2. *Statement of work.* One respondent
asserted that the proposed change
would increase the difficulty in
preparing a statement of work to
quantify a technical assistance contract.

Councils' response: No change. The
proposed change would not impact the
preparation of statements of work.

3. *Effect on costs.* Two respondents
disagreed with the proposed change on
the basis that existing FAR language
contains the necessary flexibility, and
that the proposed language would
reduce latitude of the contracting
officer, increase the costs of doing
business with the government, and
generate more paper. Other points made
were that the inconsistency between
FAR 32.503-5(c) and FAR 52.232-16
does not obtain the desired effect
because many offices follow single
billing for each task order, and that
single billing for the entire contract is
preferable to keep costs lower.

Councils' response: No change. The
proposed change would have minimal
impact on efficiency. The FAR currently
requires that contracting officers
administer indefinite-delivery type
contracts on a delivery order basis. The
vast majority of contractors comply with
this guidance; so adding this
requirement to the clause will simply
eliminate an inconsistency between
FAR guidance to contracting officers
and the contract clause. Furthermore,
the existing requirement for
administering progress payments on a
delivery-order basis is necessary to
maintain proper control over payment
processing and liquidations. Permitting
progress payments on a whole contract
basis would create inefficiencies in
payment approval and processing,
making it more difficult to ensure that
progress payments are paid from the
proper appropriations, and add
complexity to surveillance.

4. *No inconsistency.* One respondent
stated that there is not an inconsistency
in the FAR between the coverage in FAR
32.503-5(c) and FAR 52.232-16; that if
there is a perceived inconsistency it
does not merit a revision to the Progress
Payment clause; and that if any revision

to the FAR is necessary to resolve this
perceived inconsistency, then the FAR
should be revised to delete all
references that imply that individual
orders (under a contract) are to be
treated as separate contracts.

Councils' response: No change. The
inconsistency between the coverage in
FAR 32.503-5(c) and the Progress
Payment clause is clear. FAR 32.503-
5(c) provides that under indefinite
delivery contracts the contracting officer
should administer progress payments
made under each individual order as if
the order constituted a separate
contract, unless agency procedures
provide otherwise. However, there is no
related language in the clause at FAR
52.232-16, so the contractor is not
currently required by contract to request
progress payments on a delivery order
basis. Although contractors almost
always comply with the contracting
officer's instructions regarding
separation of progress payments by
order, a contractor may erroneously
contend that it incurred additional costs
in complying with direction to prepare
progress payments on an indefinite-
delivery contract as if each delivery
order were a separate contract. The
Councils recommend adding the
proposed language to the clause to
preclude future misunderstandings.

With regard to the comment that FAR
references implying that individual
orders should be treated as separate
contracts should be deleted, the
Councils regard the existing
requirements as necessary. The
necessity is borne of the need to
recognize that funds are typically
obligated on the individual orders, and
that individual orders must be treated as
if they were separate contracts in order
to effectively administer progress
payments; and monitor production,
payment requests, delivery payments
and liquidations.

5. *Invoices.* One respondent expressed
concern that the proposed changes
would require submission of individual
requests for payment of invoices on
indefinite-delivery service contracts.
Currently, some contractors submit
single requests for payment under
several task orders.

Councils' response: No change. The
proposed rule addresses progress
payment requests, not invoices. The rule
does not address the submission of
invoices and does not prohibit agencies
from permitting their contractors to
submit single invoices for multiple
tasks. To the extent that progress
payments are involved, existing contract
coverage at 52.232-16, Progress
Payments, acts to protect the
Government's interests.

6. *Agency procedures.* One respondent submitted the following comments:

a. The need for the rule is not evident, since the prescription in FAR 32.502-4(e) directs contracting officers to provide special contract instructions for severable work, where accounting segregation is needed, and furthermore, FAR 32.503-5(c) provides guidance to treat task orders under existing indefinite-delivery contracts as if they were separate contracts.

Councils' response: No change. Although the prescription at FAR 32.502-4(c) directs that special contract instructions be provided for severable work, the existing language at FAR 32.503-5(c) establishes a default requirement for separate administration of progress payments on delivery orders. There is a need for accompanying standard language in the clause at FAR 52.232-16, rather than requiring that special provisions be constructed for each occurrence of a fairly common situation. If special instructions were determined to be the solution to this inconsistency and those provisions were not written into a contract through an oversight, then the inconsistency would be incorporated into the contract. This would result in complications in the administration and payment of progress payments under the affected contract.

b. To fully implement the policy changes of the proposed rule, the first sentence of existing coverage in FAR 32.503(c) should be revised to add the phrase "or the contract" after the phrase "unless agency procedures."

Councils' response: No change. The recommended language is redundant because a provision should not be in the contract if it does not comply with the procedures of the awarding agency.

c. In the second sentence of FAR 32.503(c), recommend changing "if the awarding agency wants the administration* * *" to "when the awarding agency's procedures, the contract administration office's procedures, or the contract* * *" require the contract administration to be on a basis other than order-by-order.

Councils' response: No change. The recommended language contains potential conflicts, e.g., if the awarding agency procedures and the contract administration office procedures are not in step. Furthermore, the Councils regard referencing the contract in this sentence as redundant, since an alternate procedure should not be in the contract unless it complies with the awarding agency procedures. The central point of the sentence under discussion is that progress payments will be administered on an order-by-

order basis if the contract is administered by an agency other than the awarding agency, unless the awarding agency has previously coordinated that alternate arrangement with the administering agency. This point is diluted if an alternate procedure can be established simply by putting it in the contract.

d. In FAR 52.232-16(l), the FAR Council recognizes the appropriateness of special attention to the terms of the contract, but fails to take into account special agency procedures that may exist, and that are covered under existing FAR 32.503-5(c). To fully implement the policy and maintain consistency within the FAR, we recommend revising the phrase "unless otherwise specified in the contract" to "unless agency procedures or the contract provide otherwise."

Councils' response: No change. The Councils believe that the language in the proposed rule for FAR 52.232-16 obtains the desired effect, is consistent with the language in the proposed rule for FAR 32.503-5, and does effectively implement the policy. Specifically, by limiting the exceptions in FAR 52.232-16(l) to other contractual provisions, this language eliminates the potential for a requirement to be expressed in agency procedures, but not executed in the contract itself. This existing proposed rule enforces consistency between regulation and contract.

7. *Concurrence of the CAO.* The respondent recommended that the case be revised to require that the contracting officer obtain the concurrence of the contract administration office if the awarding agency wants the administration of progress payments to be on a basis other than order-by-order. This change would remove any ambiguity with regard to whether coordination with the contract administration office constitutes concurrence.

Councils' response: No change. The Councils recognize that the term "coordination" may not always be construed to mean that the awarding office will obtain the agreement of the administering office prior to deciding that progress payments will be administered on a basis other than order-by-order. However, the term "coordinate" provides more flexibility, which may be appropriate at certain times.

8. *Performance-based payments.* One respondent stated that the FAR should be revised to include a similar concept for performance-based payments. Specifically, language should be inserted into FAR part 32.10 and FAR 52.323-32, Performance-Based

Payments, to provide that, under indefinite-delivery contracts, the performance-based payments would be administered under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise. In addition to the language proposed for FAR 32.1007, this recommendation includes accompanying proposed language to be inserted in the Performance Based Payments clause at FAR 32.232-32. In addition, the FAR should be revised to provide that, for indefinite-delivery contracts, that performance-based payments be used only on individual delivery orders or task orders, and not on the basic contract.

Councils' response: The Councils believe that these recommendations are beyond the scope of the subject case.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, do not have the progress payment type of financing.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Amend section 32.503-5 by adding a sentence to the end of paragraph (c) to read as follows:

32.503-5 Administration of progress payments.

(c) * * * When the contract will be administered by an agency other than the awarding agency, the contracting officer shall coordinate with the contract administration office if the awarding agency wants the administration of progress payments to be on a basis other than order—by—order.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.232-16 by—
 - a. Revising the date of the clause;
 - b. Adding paragraph (m);
 - c. Revising the date and introductory text of Alternate II;
 - d. Redesignating paragraphs (m) and (n) of Alternate II as (n) and (o), respectively;
 - e. Revising the introductory text of the newly designated paragraph (n), and paragraph (n)(3);
 - f. Revising the date and the introductory text of Alternate III; and
 - g. Redesignating paragraph (m) of Alternate III as paragraph (n).

52.232-16 Progress Payments.

Progress Payments (April 2003)

(m) *Progress payments under indefinite—delivery contracts.* The Contractor shall account for and submit progress payment

requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.
(End of clause)

Alternate II (Apr 2003). If the contract is a letter contract, add paragraphs (n) and (o). The amount specified in paragraph (o) shall not exceed 80 percent of the maximum liability of the Government under the letter contract. The contracting officer may specify separate limits for separate parts of the work.

(n) The Contracting Officer will liquidate progress payments made under this letter contract, unless previously liquidated under paragraph (b) of this clause, using the following procedures:

(1) * * *

(2) * * *

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government will allocate the unliquidated progress payments to the terminated and unliquidated portions as the Government deems equitable, and will liquidate each portion under the relevant procedure in paragraphs (n)(1) and (n)(2) of this clause.

Alternate III (Apr 2003). As prescribed in 32.502-4(d), add the following paragraph (n) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (p):

* * *

[FR Doc. 03-6375 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2001-13 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001-13 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001-13

Item	Subject	FAR case	Analyst
I	Contract Types for Commercial Item Acquisitions	2000-013	Moss
II	Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items	1999-024	Klein
III	Federal, State, and Local Taxes	2000-016	De Stefano
IV	Progress Payment Requests	2001-006	De Stefano

Item I—Contract Types for Commercial Item Acquisitions (FAR Case 2000-013)

This final rule amends FAR 12.207, 16.202-1, and 16.203-1 to indicate that award fee and performance or delivery incentives based solely on factors other than cost may be used in conjunction with firm-fixed-price (FFP) contracts and fixed-price contracts with economic price adjustment (FP/EPA) without changing the FFP or FP/EPA nature of

the contract. A cross reference to these sections is added to FAR 12.207 to ensure clarity of the revisions relative to commercial item acquisitions.

Item II—Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items (FAR Case 1999-024)

This final rule amends FAR parts 12, 32, 47, and associated clauses to limit the types of subcontracts for which the

waiver of cargo preference statutes is applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems. This final rule also amends FAR part 12 by adding 10 U.S.C. 2631, Transportation of Supplies by Sea, to the list of laws inapplicable to subcontracts for the

acquisition of commercial items (except for certain subcontracts). FAR subpart 47.5 and the clause at FAR 52.247-64 do not generally apply to acquisitions by the Department of Defense.

Item III—Federal, State, and Local Taxes (FAR Case 2000-016)

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses pertaining to Federal, State, and local taxes. These clauses, 52.229-3, Federal, State, and Local Taxes; and 52.229-4, Federal,

State, and Local Taxes (State and Local Adjustments), are also updated to reflect information previously contained in the clause at FAR 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico. FAR clause 52.229-5 is removed.

Item IV—Progress Payment Requests Under Indefinite-Delivery Contracts (FAR Case 2001-006)

This final rule amends the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the

contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract. The rule is of special interest to contracting officers that administer indefinite-delivery contracts.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03-6376 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P



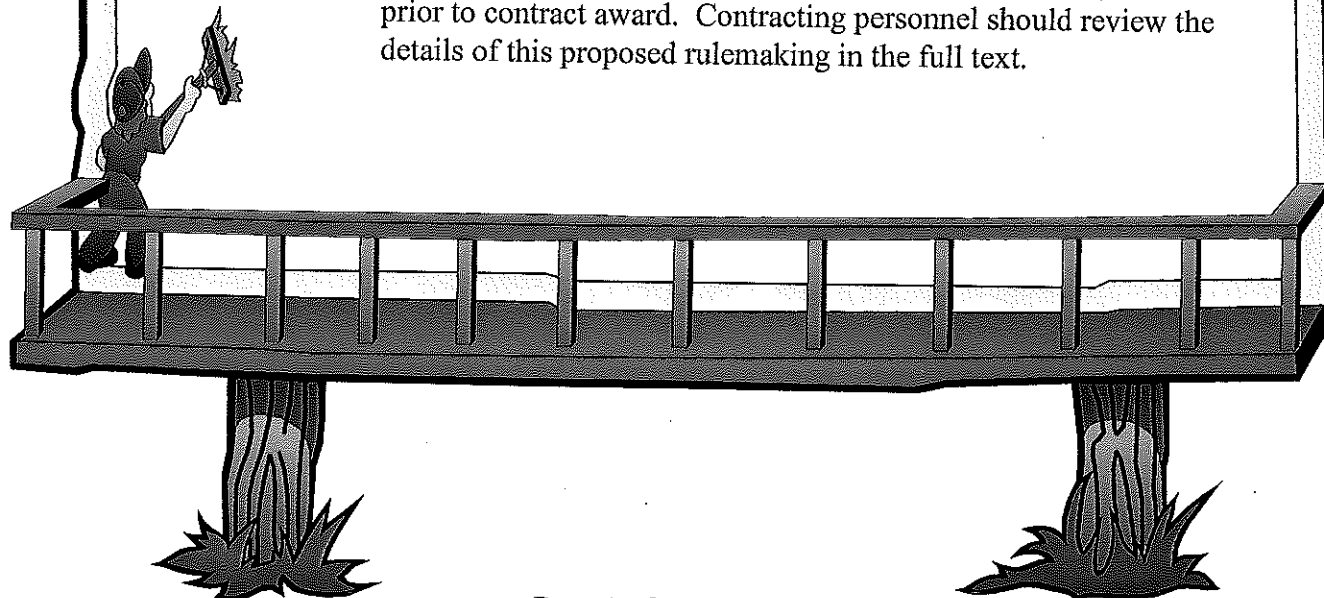
Headquarters Policy Flash

FLASH 2003-12

DATE: May 12, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Regulation Proposed Rule on Central Contractor Registration**

SUMMARY: On April 3, 2003, a notice of proposed rulemaking was published in the Federal Register at 68 FR 16366 in order to amend the Federal Acquisition Regulation (FAR) to require contractor registration in the Central Contractor Registration (CCR) database prior to contract award. Contracting personnel should review the details of this proposed rulemaking in the full text.




FLASH 2003-12
(May 12, 2003)

The proposed FAR change has been previously addressed in Flash 2003-05, Business Partner Network (BPN)/Central Contractor Registration (CCR), Proposed Elimination of Standard Form 129, and CONTRACTOR REGISTRATION ALERT. This notice of proposed rulemaking seeks to-

- Amend the FAR to require contractor registration in the CCR database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement.
- Requires Contracting Officers to modify existing contracts whose period of performance extends beyond September 30, 2003, compelling contractors to register in the CCR database by September 30, 2003.
- Revise the source list of supplies at FAR 13.102 to reflect statutory changes with respect to goals for the participation of small business concerns in procurement contracts.

Comments to the notice of proposed rulemaking are due in this office by May 21, 2003. This will allow up to prepare a consolidated response to the General Services Administration, as necessary. The notice of proposed rulemaking is available via the internet at <http://www.acqnet.gov/far/ProposedRules/2002-018.pdf>

Questions concerning this Flash should be directed to Denise Wright at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov


Robert M. Webb, Acting Director
Office of Procurement
and Assistance Policy

cc: PPAG Members



Federal Register

Thursday,
April 3, 2003

Part III

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Part 2, et al.

**Federal Acquisition Regulation; Central
Contractor Registration; Proposed Rule**

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 2, et al.

[FAR Case 2002-018]

RIN 9000-AJ61

Federal Acquisition Regulation;
Central Contractor Registration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require contractor registration in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond September 30, 2003, to require contractors to register in the CCR database by September 30, 2003. The rule also revises the source list of supplies at FAR 13.102 to reflect statutory changes in 15 U.S.C. 644(g).

DATES: Interested parties should submit comments in writing on or before June 2, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2002-018@gsa.gov. Please submit comments only and cite FAR case 2002-018 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAR case 2002-018.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend the Federal Acquisition Regulation (FAR) to

require contractor registration in a Central Contractor Registration (CCR) database prior to the award of a contract, basic agreement, basic ordering agreement, blanket purchase agreement, and the modification of all existing contracts, basic agreements, basic ordering agreements, blanket purchase agreements, or orders by September 30, 2003.

Certain agencies, e.g., DoD, currently require in their regulations that contractors register in the CCR database. For other agencies, under current FAR regulations, contractors are required to submit the same information to various contracting and payment offices. Under the proposed rule, contractors are required to provide certain business information, including their Taxpayer Identification Number (TINs) and Electronic Funds Transfer (EFT) information only once into a common Governmentwide data source. The Government will use this common Governmentwide data source to more efficiently meet the requirements of the Debt Collection Improvement Act of 1996 (section 31001 of Pub. L. 104-134). This proposed rule will not create a total electronic commerce environment, but will help provide a basic framework or foundation that will allow migration to a total electronic commerce environment. There are other projects that are completed (FedBizOpps) or in the planning stages, which are complementary and will also become part of the total electronic commerce initiative.

The "Business Partner Network" definition in the FAR coverage has been limited to contractors because the regulation is directed towards contractors. It should be noted that Government use of the Business Partner Network is broader in scope and includes contractors, grantees, and others.

Also, the source list of supplies at FAR 13.102 has been revised to reflect statutory changes in 15 U.S.C. 644(g).

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for

the Small Business Administration. The analysis is summarized as follows:

Certain agencies, e.g., DoD, currently require in their regulations that contractors register in the CCR database. For other agencies, under current FAR regulations, contractors are required to submit the same information to various contracting and payment offices. Under the proposed rule, contractors are required to provide certain business information, including their Taxpayer Identification Number (TINs) and Electronic Funds Transfer (EFT) information only once into a common Governmentwide data source. The Government will use this common Governmentwide data source to more efficiently meet the requirements of the Debt Collection Improvement Act of 1996 (section 31001 of Pub. L. 104-134). This proposed rule will not create a total electronic commerce environment, but will help provide a basic framework or foundation that will allow migration to a total electronic commerce environment. There are other projects that are completed (FedBizOpps) or in the planning, which are complementary and will also become part of the total electronic commerce initiative.

To date, no supporting data has been collected; therefore, there is no available estimate of the number of small businesses that will be subject to the rule. However, some agencies (e.g., DoD) already have this requirement and there does not appear to be any adverse impact on small business. Based on Federal Procurement Data System information, approximately, 54,199 businesses (42,675 small businesses, 11,524 large businesses) were awarded contracts of \$25,000 or more in fiscal year 2001. It is estimated that a majority of them will be subject to the rule. Many of these businesses are already among the over 200,000 registrants in CCR. Information is not available to identify the additional number of small businesses that were awarded contracts of less than \$25,000, or were awarded basic agreements, basic ordering agreements, or blanket purchase agreements. All small entities will be subject to the rule unless their contract, basic agreements, basic ordering agreements, and blanket purchase agreements fall within one of the five exceptions. Administrative or financial personnel, who have general knowledge of the contractor's business, including the contractor's bank account and financial agent, are able to register by providing the pertinent information into the CCR database. Existing regulations require contractors to submit, with each offer, or as a term of each basic agreement, basic ordering agreement, and blanket purchase agreement, the same information.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 2, 4, 13, 32, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately

and should cite 5 U.S.C 601, *et seq.* (FAR case 2002-018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning Central Contractor Registration to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

The paperwork burden analysis takes into account the burden required for current registrants to keep the information current, complete and accurate and the burden required for new registrants to review instructions, search existing data sources, gather and maintain the data needed, and completing and reviewing the collection of information. Public reporting burden for this collection of information is estimated to average 1 hour per response for new and current registrants.

The annual reporting burden is estimated as follows:

Respondents: 54,199.

Responses per respondent: 1.

Total annual responses: 54,199.

Preparation hours per response: 1.

Total response burden hours: 54,199.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 2, 2003, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the justification from the General Services

Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-00XX, Central Contractor Registration, in all correspondence.

List of Subjects in 48 CFR Parts 2, 4, 13, 32, and 52

Government procurement.

Dated: March 27, 2003.

Ralph J. De Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 13, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 13, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101(b) by adding, in alphabetical order, the definitions "Central Contractor Registration (CCR) database", "Data Universal Numbering System (DUNS) number", "Data Universal Numbering System +4 (DUNS+4) number", and "Registered in the CCR database" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Central Contractor Registration (CCR) database means the primary Government repository for contractor information required for the conduct of business with the Government.

* * * * *

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-character suffix that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (*see* Subpart 32.11) for the same concern.

* * * * *

Registered in the CCR database means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated mandatory data fields and has marked the record "Active".

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.603 by revising paragraph (a)(1) to read as follows:

4.603 Solicitation provisions.

(a)(1) The contracting officer shall insert the provision at 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(i) Are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (*see* 4.602(c)), or a similar agency form; and

(ii) Do not contain the clause at 52.204-XX, Central Contractor Registration.

* * * * *

4. Add subpart 4.11 to read as follows:

Subpart 4.11—Central Contractor Registration

Sec.

4.1100 Scope.

4.1101 Definitions.

4.1102 Policy.

4.1103 Procedures.

4.1104 Solicitation provision and contract clauses.

4.1100 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the Central Contractor Registration (CCR) database, a part of the Business Partner Network (BPN) to—

(a) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and

(b) Establish a common source of vendor data for the Government.

4.1101 Definitions.

As used in this subpart—

Agreement means basic agreement, basic ordering agreement, or blanket purchase agreement.

Business Partner Network means an integrated electronic infrastructure the Government uses to manage (*i.e.*, collect, validate, access and maintain) the information it needs to transact business with its contractors.

4.1102 Policy.

(a) Prospective contractors shall be registered in the CCR database prior to award of a contract or agreement, except for—

(1) Purchases that use a Governmentwide commercial purchase card as the purchasing mechanism;

(2) Classified contracts or purchases (*see* 4.401) when registration in the CCR database, or use of CCR data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by—

(i) Deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7); or

(ii) Contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, *e.g.*, Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts to support unusual or compelling needs (*see* 6.302-2); and

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration before award.

(b) If practical, the contracting officer shall modify the contract or agreement awarded under paragraph (a)(3) or (a)(4) of this section to required CCR registration.

(c)(1)(i) If a contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to change the name in the CCR database; comply with the requirements of 42.12; and agree in writing to the timeline and procedures specified by the responsible contracting officer. The contractor must provide with the notification sufficient documentation to support the "legally" changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of the FAR clause at 52.204-XX, CCR, or fails to perform the agreement at FAR 52.204-XX(g)(1)(i)(3), and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "suspension of payment" paragraph of the EFT clause of this contract.

(2) The contractor shall not change the name or address for electronic funds transfer payments (EFT) or manual

payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (*see* Subpart 32.8, Assignment of Claims).

Assignees shall be separately registered in the CCR database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the "suspension of payment" paragraph of the EFT clause of this contract.

4.1103 Procedures.

(a) Unless the acquisition is exempt under 4.1102, the contracting officer—

(1) Shall verify that the prospective contractor is registered in the CCR database (*see* paragraph (b) of this section) before awarding a contract or agreement;

(2) Should use the DUNS number or, if applicable, the DUNS+4 number, to verify registration—

(i) Via the Internet at <http://www.ccr.gov>;

(ii) By calling toll-free: 1-888-227-2423, commercial: (616) 961-5757, or DSN: 932-5757; or

(iii) As otherwise provided by agency procedures; and

(3) Shall modify a contract or agreement that does not already include the requirement to be registered in the CCR database and maintain registration until final payment, and whose period of performance extends beyond September 30, 2003—

(i) To incorporate, as appropriate, the clause at 52.204-XX, Central Contractor Registration, and its Alternate 1, or, for a contract for commercial items, an addendum to 52.212-4, Contract Terms and Conditions—Commercial Items, that requires the contractor to be registered in the CCR database by September 30, 2003, and maintain registration until final payment; and

(ii) In sufficient time to permit CCR registration by September 30, 2003.

(b) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204-XX, or 52.212-4(t), or a similar agency clause.

(c) If the contracting officer, when awarding a contract or agreement, determines that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the award does not apply (*see* 4.1102), the contracting officer shall—

(1) If the needs of the requiring activity allow for a delay, make award after the apparently successful offeror

has registered in the CCR database. The contracting officer shall advise the offeror of the number of days it will be allowed to become registered. If the offeror does not become registered by the required date, the contracting officer shall award to the next otherwise successful registered offeror following the same procedures (*i.e.*, if the next apparently successful offeror is not registered, the contracting officer shall advise the offeror of the number of days it will be allowed to become registered, etc.); or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(d) Agencies shall protect against improper disclosure of contractor CCR information.

(e) The contracting officer shall, on contractual documents transmitted to the payment office, provide the DUNS number, or, if applicable, the DUNS+4, in accordance with agency procedures.

4.1104 Solicitation provision and contract clauses.

Except as provided in 4.1102(a), use the clause at 52.204-XX Central Contractor Registration, in solicitations and contracts that require contractors to be registered in the CCR database. If modifying a contract, or an agreement to require registration, use the clause with its Alternate I.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Amend section 13.102 by revising the introductory text of paragraph (a); and adding paragraphs (a)(4) and (a)(5) to read as follows:

13.102 Source list.

(a) Each contracting office should maintain a source list (or lists, if more convenient). A list of new supply sources may be obtained from the Central Contractor Registration database (*see* 4.11) at <http://www.ccr.gov> or the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration. Either list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

* * * * *

(4) HUBZone small business.

(5) Service-disabled veteran-owned small business.

* * * * *

PART 32—CONTRACT FINANCING

6. Amend section 32.805 by adding paragraph (d)(4) to read as follows:

32.805 Procedure.

* * * * *

(d) * * *

(4) The assignee is registered separately in the Central Contractor Registration unless one of the exceptions in 4.1102 applies.

* * * * *

32.1103 [Amended]

7. Amend section 32.1103 by removing the word "where" from paragraph (d).

8. Amend section 32.1110 by revising the introductory text of paragraph (a), (a)(1), and (a)(2)(i) to read as follows:

32.1110 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at—

(1) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, in solicitations and contracts that include the clause at 52.204–XX, Central Contractor Registration, or an agency clause that requires a contractor to be registered in the CCR database and maintain registration until final payment, unless—

(i) Payment will be made through a third party arrangement (see 13.301 and paragraph (d) of this section); or

(ii) An exception listed in 32.1103(a) through (i) applies.

(2)(i) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, in solicitations and contracts that require EFT as the method for payment but do not include the clause at 52.204–XX, Central Contractor Registration, or a similar agency clause that requires the contractor to be registered in the CCR database.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Amend section 52.204–6 by revising the date of the provision and paragraph (b); and removing paragraph (c). The revised text reads as follows:

52.204–6 Data Universal Numbering System (DUNS) Number.

* * * * *

Data Universal Numbering System (DUNS) Number (Date)

* * * * *

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–800–333–0505 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet Information Services Office.

(2) The offeror should be prepared to provide the following information:

(i) Company name.

(ii) Company address.

(iii) Company telephone number.

(iv) Line of business.

(v) Chief executive officer/key manager.

(vi) Date the company was started.

(vii) Number of people employed by the company.

(viii) Company affiliation.

(End of provision)

10. Add section 52.204–XX to read as follows:

52.204–XX Central Contractor Registration.

As prescribed in 4.1104(a), use the following clause:

Central Contractor Registration (Date)

(a) Definitions. As used in this clause—

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-character suffix that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR 32.11) for the same parent concern.

Registered in the CCR database means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record "Active".

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–800–333–0505 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet Information Services Office.

(2) The offeror should be prepared to provide the following information:

(i) Company name.

(ii) Company address.

(iii) Company telephone number.

(iv) Line of business.

(v) Chief executive officer/key manager.

(vi) Date the company was started.

(vii) Number of people employed by the company.

(viii) Company affiliation.

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered offeror.

(e) Processing time should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not

completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to (1) Change the name in the CCR database; (2) comply with the requirements of subpart 42.12; and (3) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the "legally" changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(3) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for electronic funds transfer (EFT) payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 616-961-5757.

(End of clause)

Alternate I (DATE). As prescribed in 4.1104(a), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall be registered in the CCR database by [Contracting Officer shall insert a date no later than September 30, 2003]. The Contractor shall maintain registration during performance and through final payment of this contract.

(2) The Contractor shall enter, in the block with its name and address on the

cover page of the Standard Form 30, Amendment of Solicitation/Modification of Contract, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the Contractor's name and address exactly as stated in this contract. The DUNS number will be used by the Contracting Officer to verify that the Contractor is registered in the CCR database.

11. Amend section 52.212-1 by revising date of the provision and paragraph (j); and adding a new paragraph (k) to read as follows:

52.212-1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Date)

* * * * *

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to all offers exceeding \$25,000, and offers of \$25,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database. The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR 32.11) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-800-333-0505 or via the Internet at <http://www.dnb.com>. An offeror located outside the United States must contact the local Dun and Bradstreet Information Services Office for a DUNS number.

(k) *Central Contractor Registration.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered offeror. Offerors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 616-961-5757.

(End of provision)

12. Amend section 52.212-4 by revising date of the clause; and adding a new paragraph (t) to read as follows:

52.212-4 Contract Terms and Conditions—Commercial Items

* * * * *

Contract Terms and Conditions—Commercial Items (Date)

* * * * *

(t) *Central Contractor Registration (CCR).* (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2) The Contractor shall not change the name or address for electronic funds transfer (EFT) payments or manual payments as appropriate in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(3) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 616-961-5757.

(End of clause)

52.213-4 [Amended]

13. Amend section 52.213-4 by removing from the clause heading "(SEPT 2002)" and in paragraph (b)(1)(ix) "(MAY 1999)" and adding in their places "(DATE)".

14. Amend section 52.232-33 by—

- a. Revising the date of clause;
- b. Removing paragraph (e);
- c. Redesignating paragraphs (f) through (j) as (e) through (i), respectively; and
- d. Revising the newly designated paragraph (g) to read as follows:

52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.

* * * * *

Payment by Electronic Funds Transfer—Central Contractor Registration (Date)

* * * * *

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such

assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized

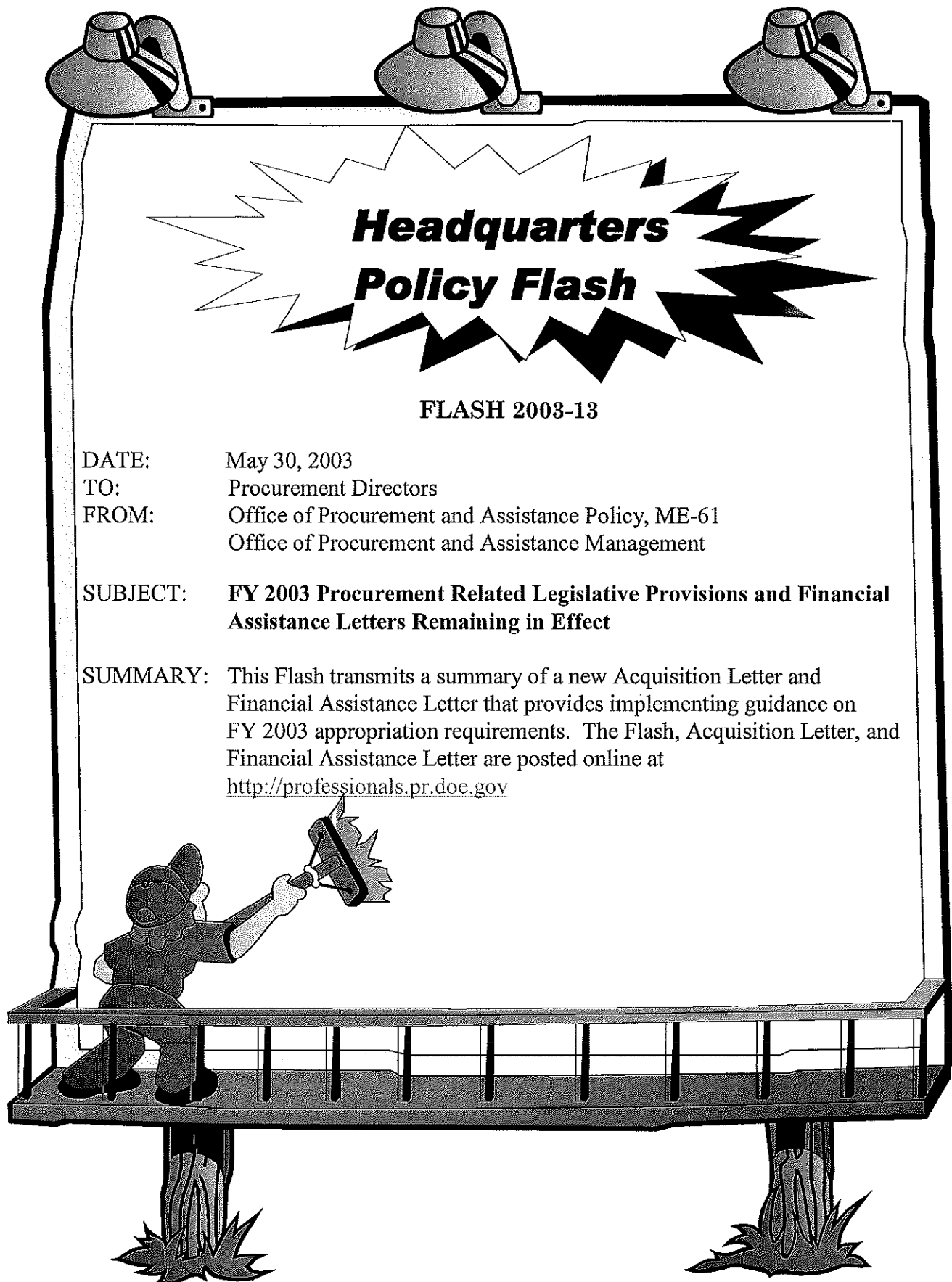
under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of

claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

* * * * *

[FR Doc. 03-7928 Filed 4-2-03; 8:45 am]

BILLING CODE 6820-EP-P



DATE: May 30, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management
SUBJECT: **FY 2003 Procurement Related Legislative Provisions and Financial Assistance Letters Remaining in Effect**
SUMMARY: This Flash transmits a summary of a new Acquisition Letter and Financial Assistance Letter that provides implementing guidance on FY 2003 appropriation requirements. The Flash, Acquisition Letter, and Financial Assistance Letter are posted online at <http://professionals.pr.doe.gov>

FLASH 2003-13
May 30, 2003

1. **Acquisition Letter 2003-02 - FY 2003 Legislation Provisions (dated May 30, 2003)**

Energy and Water Act

AL-2003-03 provides guidance regarding the implementation of Section 301, 304, 307, 501, 502, and Legislative Direction provided in the House of Representatives Conference Report (Augmenting Federal Staff) of the Energy and Water Development Appropriations Act Pub. L. 108-7 (Division D), also known as the E&W Act. Provisions related to the use of competitive procedures, RFP's for unfunded programs, user facilities, lobbying restrictions, and purchase of American made products are carried over from the FY 2002 Energy and Water Development Appropriations Act Pub. L. 107-63.

Use of competitive procedures and RFP's for unfunded programs have changed from previous years E&W Acts. Use of competitive procedures includes a new prohibition on the use of appropriated funds for the award of an environmental remediation contract or waste management contract in excess of \$100 million in annual funding at a current or former management and operating contract site or facility. Also, as in previous E&W Acts the Secretary is required to submit a report; however, as of the E&W Act for FY 2003 the report is to be submitted within 30 days of Secretarial authorization of a waiver. In addition, the applicability of RFP's for unfunded programs has been clarified so as not to preclude planning activities as addressed in DOE Order 413.3, Program and Project Management for the Acquisition of Capital Assets. It should be noted that in this instance, under this provision planning activities are governed by Program specific funding.

Also, as a fairly new provision Section 307, User Facility, has been evaluated by the Department. The requiring and implementing procurement guidance is contained in the attached Acquisition Letter. Consistent with Acquisition Letter 2002-02, the guidance related to user facilities in the current Acquisition Letter is in concert with the previous overview.

Interior Act

FY 2003 Department of Interior and Related Agencies Appropriations Act Pub. L. 108-7 (Division F) contains three provisions relative to DOE procurement programs; Section 301 addresses public availability of information, Section 302 lobbying restrictions, and an unnumbered provision that prohibits the preparation, issuance, or processing of procurement documents for unfunded programs. Guidance implementing these provisions is contained in the attached Acquisition Letter.

FLASH 2003-13
May 30, 2003

Defense Act

The Bob Stump National Defense Authorization Act for FY 2003, Pub. L. 107-314, contains a DOE specific procurement related provision providing an extension to the Price-Anderson Act. The implementing guidance relative to this provision can be obtained in Policy Flash 2002-40, Extension of the Price Anderson Act. In addition, other procurement related provisions affecting the Federal Government, as a whole will be processed through the usual FAR regulatory process.

E-Government Act

The E-Government Act of 2002, Pub. L. 107-347, does not include any DOE specific procurement related provisions. However, consistent with the National Defense Act FY 2003, procurement related provisions affecting the Federal Government, as a whole will be processed through the usual FAR regulatory process.

Homeland Security Act

Homeland Security Act of 2002, Pub. L. 107-296, also includes a DOE specific procurement related provision providing for joint sponsorship between DOE and the Department of Homeland Security (DHS) as it relates to laboratories and sites. Section 309, Utilization of Department of Energy National Laboratories and Sites in Support of Homeland Security Activities, provides that the Secretary of the Department of Homeland Security may utilize DOE national labs and sites. DOE Notice 481.1A was issued on April 21, 2003, to provide guidance in the Department's performance of work for the DHS.

For questions related to this Acquisition Letter, contact Denise P. Wright on (202) 586-6217 or via e-mail at Denise.Wright@hq.doe.gov

2. Financial Assistance Letter (FAL) 2003-01


FAL 2003-01, "Financial Assistance Letters remaining in Effect" was issued on May 21, 2003.

FLASH 2003-13
May 30, 2003

3. Financial Assistance Letter (FAL) 2003-02 on FY 2003 Legislative Provisions (dated May 21, 2003)

The guidance in the FAL is the same as the guidance provided in FL 2002-02,
"Implementation of FY 2002 Legislative Provisions:

For questions related to this FAL, contact Jackie Kniskern at 202-586-8189 or via e-mail
at Jacqueline.Kniskern@hq.doe.gov


Robert M. Webb, Acting Director
Office of Procurement and
Assistance Policy

Attachments

cc: PPAG Members
FAAC Members

Department of Energy
Financial Assistance Regulation

No. 2003-01
Date 05/21/03



FINANCIAL ASSISTANCE LETTER

Financial Assistance Letters (FALs) that remain in effect are identified below. All other previously issued FALs have been superseded by a formal rulemaking, incorporated into other guidance, and/or canceled.

Financial Assistance Letters Remaining in Effect

<u>Number</u>	<u>Date</u>	<u>Subject</u>
96-01	03/08/96	Implementation Guidance on Sections 3001 and 3002 of EPCA
96-02	08/01/96	Implementation Guidance on Section 2306 of EPCA
97-02	03/12/97	Simpson-Craig Amendment Solicitation Provision and Representation
97-05	12/18/97	Merit Review/Lobbying
2001-02	07/30/01	Preservation of Open Competition and Government Neutrality Towards Contractor's Labor Relations on Federally Funded Construction Projects
2001-03	10/12/01	Determining Appropriate Award Instrument
2001-04	10/25/01	Management of Report Deliverables
2002-03	12/10/02	Implementation of DOE's Industry Interactive Procurement System (IIPS)
2003-02	05/21/03	Implementation of Fiscal Year (FY) 2003 Legislative Provisions



Department of Energy
Acquisition Regulation

No. AL-2003-03

Date: 05/30/03

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executive of DOE and NNSA

Subject: Implementation of Fiscal Year 2003 Legislative Provisions

References:

DEAR 917.6	Management and Operating Contracts
DEAR 970.1706-1	Award, Renewal, and Extension.

When is this Acquisition Letter (AL) Effective?

This AL implements certain provisions contained in the Consolidated Appropriations Resolution, 2003, Pub. L. 108-7. The Energy and Water Development Appropriations Act, 2003, Pub. L. 108-7 (Division D) and the Department of Interior and Related Agencies Appropriations Act, 2003, Pub. L. 108-7 (Division F) are contained in the Consolidated appropriations. The statutory provisions addressed in this AL are effective on the date of enactment of this Act. The Energy and Water Development Appropriations Act, 2003 and the Department of Interior and Related Agencies Appropriations Act, 2003, were enacted on February 20, 2003.

When Does this AL Expire?

This AL will remain in effect until superseded or canceled.

Who is the Point of Contact?

Contact Denise Wright of the Office of Procurement and Assistance Policy at (202) 586-6217.

Visit our website at www.pr.doe.gov for additional information on Acquisition Letters and other policy issues.

What is the Purpose of this Acquisition Letter?

The purpose of this Acquisition Letter (AL) is to provide information and guidance regarding the Department's implementation of the following statutory provisions and legislative direction.

- ◆ Sections 301, 304, 307, 501, and 502 of the FY 2003 Energy and Water Development Appropriations Act, Pub. L. 108-7, hereinafter referred to as the "Energy and Water Act."
- ◆ Sections 301, 302 and an administrative provision contained in the FY 2003 Department of Interior and Related Agencies Appropriations Act, Pub. L. 108-7, hereinafter referred to as the "Interior Act."

Detailed guidance regarding the scope of these provisions is provided below.

What is the Background?

Sections 301, 304, 307, 501, and 502 of Energy and Water Development Act are carried-over from the FY 2002 Energy and Water Development Appropriations Act (Pub. L. 107-66). However, there are significant changes to Section 301.

Sections 301 and 302 of the Interior Act are carried-over from the FY 2002 Department of Interior and Related Agencies Appropriations Act (Pub. L. 107-63). An unnumbered administrative provision, as carried over from previous years, included in this Act is similar to Section 304 of the Energy and Water Act whereby no funds provided in this Act may be expended to prepare, issue, or process procurement documents when appropriations have not been made.

Guidance Included in this Acquisition Letter

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I. Summaries of Statutory Provisions and Legislative Direction

Energy and Water Act

Section 301. Prohibits the use of funds appropriated by this Act for the award of a management and operating (M&O) contract or a contract for environmental remediation or waste management in excess of \$100 million in annual funding at a current or former management and operating contract site or facility, or a significant extension or expansion to an existing M&O contract or other contract covered by this section unless competitive procedures are used. The Secretary of Energy may grant, on a case-by-case basis, a waiver to allow for other than competitive procedures. The Secretary may not delegate the authority to grant a waiver. The requirement parallels existing DOE policy set forth in DEAR 917.602 providing for full and open competition in the award, amendment, or modification of M&O contracts and requiring a justification and Head of Agency authorization when such awards are made without providing for full and open competition. Additionally, in order to comply with Section 301 the Secretary will submit a report within 30 days after the Secretary has authorized such a waiver to provide notification to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate detailing the substantive reasons for the waiver authorizing the use of non-competitive procedures¹. *Note: underlined portions are new for FY 2003.*

Section 304. Prohibits the use of funds appropriated in the Energy and Water Act to prepare or initiate Request For Proposals (RFPs) for a program if Congress has not funded the program.

Section 307. Directs the Department of Energy to ensure that broad public notice be given when a user facility is available to universities and other potential users or when the Department of Energy seeks input from universities and other potential users regarding significant characteristics or equipment in a user facility or a proposed user facility.

¹ Section 301, paragraph (b), states: "within 30 days of formally notifying an incumbent contractor that the Secretary intends to grant such a waiver, . . ." DOE does not ordinarily provide formal notification to incumbents of the Secretary's intention to grant a waiver under Section 301. In the interest of clarity, the above requirement achieves the obligation of the statutory language, and is consistent with actual practice.

In addition, this provision further requires the Department of Energy to employ "full and open competition"² in selecting a university or other potential users as a formal partner in the establishment or operation of a user facility.

Section 501. Prohibits the use of funds appropriated in the Act, either directly or indirectly, to influence congressional action on any legislation or appropriation matter pending before Congress, other than to communicate to Members of Congress as described in section 1913 of title 18, United States Code.

Section 502. Provides that it is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds appropriated by this Act should be American-made. Additionally, when providing financial assistance to or entering into any contract with any entity notice of this policy shall be given. This section prohibits the award of contracts and subcontracts to persons who falsely label products as made in America. Persons determined by a court or Federal agency to have intentionally affixed such a false label, or any inscription with the same meaning, will be ineligible to receive any contract or subcontract using funds made available in the Act, pursuant to the debarment, suspension, and ineligibility procedures contained in FAR 9.4.

Interior Act

Section 301. Provides that any publicly funded consulting service contract pursuant to 5 U.S.C. 3109 be limited to those contracts where expenditures are a matter of public record and are available for public inspection, except where otherwise provided by law or Executive order.

Section 302. Prohibits the use of appropriations for any activity or publication/distribution of literature to promote public support or opposition to any legislative proposal on which Congressional action is not complete.

Administrative Provision (unnumbered). Similar to Section 304 of the Energy and Water Act, this section of the Interior Act prohibits the use of funds to prepare, issue, or process procurement documents for programs or projects for which appropriations have not been made.

² See Item IV. User Facilities.

AL-2003-03 (05/30/03)

Legislative Direction - Energy and Water Act

Augmenting Federal Staff. Directs the Department of Energy not to exceed 220 management and operating contractor employees assigned to the Washington metropolitan area for fiscal year 2003, the same ceiling as fiscal year 2002. The reporting requirements shall remain the same.

II. Use of Other Than Competitive Procedures for Management and Operating Contracts, Environmental Remediation or Waste Management Contracts and Extensions

What is the scope of this requirement?

The requirements of Section 301 of the Energy and Water Act apply to M&O contract, or environmental remediation or waste management contract awards in excess of \$100 million in annual funding at a current or former contract site or facility. This provision also affects significant extensions or expansions to existing M&O, environmental remediation, or waste management contracts (except as noted below) that are awarded using funds appropriated in the Act without providing for full and open competition in accordance with the policies and procedures set forth at DEAR 917.602(b) and FAR Subpart 6.3. Section 301 and the guidance set forth herein, do not apply to the exercise of an option in accordance with DEAR 970.1706-1.

What procedures need to be followed to implement this requirement?

The justification and Secretarial authorization required by DEAR 917.602(b) will address and satisfy the Secretarial authorization requirements of Section 301 of the Energy and Water Act for M&O, or environmental remediation, or waste management contracts and extensions that are awarded without using competitive procedures.

The Office of Contract Management will prepare the Secretarial notification to Congress and will coordinate its approval and signature by the Secretary for all of DOE (until such time as NNSA designates an Office to prepare and coordinate its notifications). The written notification to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate will be provided as soon as practicable following the Secretarial authorization required by DEAR 917.602(b), but not later than 30 days after a waiver has been authorized.

III. Preparation and Issuance of Procurement Documents For Unfunded Programs

What is the scope of this requirement?

The requirement of Section 304 of the Energy and Water Act and the unnumbered administrative provision contained in the Interior Act apply to Departmental initiatives for a program or project that has not been funded by Congress:

- ◆ Section 304 of the Energy and Water Act requires that funds appropriated by the Act shall not be used to prepare or initiate RFPs for a program if the program has not been funded.
- ◆ The unnumbered administrative provision of the Interior Act prohibits the use of funds to prepare, issue, or process procurement documents for programs or projects for which appropriations have not been made.

What procedures need to be followed to implement these requirements?

- ◆ For programs funded by the Energy and Water Act, contracting activities shall not prepare or initiate RFPs, in support of a program or project for which funds have not been appropriated.
- ◆ For programs funded by the Interior Act, contracting activities shall not prepare, issue, or process procurement documents in support of a program or project for which funds have not been appropriated.

Energy and Water Act (Programs)

Energy Supply
Non-Defense Environmental Management
Uranium Facilities Maintenance and Remediation
Science
Nuclear Waste Disposal
Departmental Administration
Office of Inspector General
Power Marketing Administrations
Federal Energy Regulatory Commission
National Nuclear Security Administration
Defense Environmental Management
Defense Nuclear Waste Disposal
Energy Security and Assurance

Interior Act (Programs)

Naval Petroleum and Oil Shale
Reserves
Elk Hills School Lands Fund
Strategic Petroleum Reserve
Clean Coal Technology
Economic Regulation
Energy Information
Administration
Energy Conservation
Fossil Energy Research &
Development

Energy and Water Act (Programs cont.)

Security
Intelligence
Counterintelligence
Independent Oversight and Performance Assurance
Environmental, Safety and Health
Worker and Community Transition
Hearing and Appeals

IV. User Facilities

What is the scope of this requirement?

There are three circumstances under which Departmental processes are affected by Section 307:

- ◆ The first circumstance is where the Department or its management and operating (M&O) contractor makes a user facility available to universities and other potential users;
- ◆ The second is where the Department seeks advice or information from universities or other potential users on the significant characteristics or equipment to be used in a user facility or a proposed user facility; and
- ◆ The third instance is where the Department seeks to create a formal partnership with a university or other potential user for the establishment or operation of a user facility. This can occur in two ways: (1) the Department seeks to enter into a formal partnership with a private party to establish or operate a user facility; or (2) a DOE contractor responsible for the management and operation of a DOE user facility seeks to enter into a formal partnership with a university or other potential user to establish or operate a user facility.

Note: Normally, neither DOE nor its M&O contractors enter into formal partnerships for the management or operation of DOE user facilities. Rather, the operation of these facilities is accomplished under contractual service arrangements, which do not contain legal indicia of a formal partnership. Accordingly, it is not anticipated that this circumstance will arise.

What procedures need to be followed to implement this requirement?

In the first two circumstances as noted on the previous page, DOE should assure that the activities are conducted in a manner that promotes broad participation by all potential scientific and technical users of the facility. The DOE or contractor program element with responsibility for a user facility should ensure that broad public notice of these two activities is provided through publication in the Federal Register or FedBizOps, in addition to relevant scientific journals.

The third circumstance requires that any formal partnership between DOE, its M&O contractor, and a private party for the establishment or operation of a user facility be accomplished through a selection process based on "full and open competition"³.

Contracting officers should assure that, in the unlikely event that DOE or its M&O contractor seeks to establish a formal partnership for the establishment or operation a user facility, the competition requirements conform to this AL.

³ Section 307 uses the phrase "full and open competition." That phrase is a term of art in the Government procurement process. Where DOE is not awarding a contract creating a formal partnership, but instead is using a financial assistance instrument or allowing an M&O contractor to subcontract in creating a formal partnership, a broad public announcement of the opportunity being open to all will satisfy the statute.

V. Lobbying Restrictions

What is the scope of this requirement?

Section 501 of the Energy and Water Act, and Section 302 of the Interior Act apply to all solicitations and awards of DOE contracts under which funds appropriated in either Act are obligated.

What procedures need to be followed to implement this requirement?

The following clause shall be incorporated into solicitations and awards of contracts where the expenditure of funds is made available under the Energy and Water Act:

Lobbying Restriction (Energy and Water Development Appropriations Act, 2003)

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

The following clause shall be incorporated into solicitations and awards of DOE contracts where the expenditure of funds is made available in the Interior Act:

Lobbying Restriction (Department of Interior and Related Agencies Appropriations Act, 2003)

The contractor agrees that none of the funds obligated on this award shall be made available for any activity of the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

VI. Purchase of American-Made Equipment and Products-Sense of Congress

What is the scope of this requirement?

Section 502, paragraphs (a) and (b) of the Energy and Water Act apply to all solicitations and awards of contracts using funds appropriated in the Act.

What procedures need to be followed to implement this requirement?

The following notice shall be incorporated into solicitations and awards of contracts using funds appropriated in the Energy and Water Act.

Notice Regarding the Purchase of American-Made Equipment and Products-Sense of Congress.

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American -Made.

(End of Notice)

VII. Prohibition of Contracts with Persons Falsely Labeling Products as Made in America

What is the scope of this requirement?

Section 502, paragraph (c), of the Energy and Water Act, applies to all contracts, and subcontracts, under which funds are appropriated in this Act and obligated.

What procedures need to be followed to implement this requirement?

Pursuant to FAR 9.405(b), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

If DOE, or contractor personnel become aware of possible violation of the prohibition against falsely mislabeling products as made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the matter should be promptly reported through the DOE contracting officer. The report of an entity in violation of the prohibition against falsely mislabeling products as American-Made

should be submitted to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii). For NNSA contracts, the Office of Management Systems will coordinate its activities with the NNSA office of Procurement and Assistance Management.

VIII. Legislative Direction - Energy and Water

Augmenting Federal Staff

What is the scope of this requirement?

The Department is to provide a report on the use of M&O contractor employees assigned to the Washington metropolitan area. The report is to include detailed information for each support service contract at Headquarters. The committee agrees that the number of M&O contractor employees assigned to the Washington metropolitan area shall not exceed 220.

What procedures need to be followed to implement this requirement?

Controls for the use of facility contractor employees for services in the Washington metropolitan area are established in DOE Order 350.2, "Use of Facility Contractor Employees for Services to DOE in the Washington, D. C. Area." The Headquarters Office of Contract Management is responsible for preparation and submission of the report to Committee. While support service contract ceilings were discontinued, the use of such contracts will continue to be monitored respectively by the DOE and NNSA Office of Procurement and Assistance Management. The Director, Office of Procurement and Assistance Management for NNSA will provide information resulting from its monitoring to the Headquarters Office of Contract Management.



FINANCIAL ASSISTANCE LETTER

This Financial Assistance Letter is issued under the authority of the Procurement Executives of DOE and NNSA

Subject: Implementation of Fiscal Year (FY) 2003 Legislative Provisions

When is this Financial Assistance Letter (FAL) Effective?

This FAL implements certain provisions contained in the Consolidated Appropriations Resolution, 2003, Pub. L. 108-7. The Energy and Water Development Appropriations Act, 2003, Pub. L. 108-7 (Division D) and the Department of Interior and Related Agencies Appropriations Act, 2003, Pub. L. 108-7 (Division F) are contained in the consolidated appropriations. In addition, certain provisions were made permanent for fiscal year 2000 and thereafter in the Department of Interior and Related Agencies Appropriations Act of 2000, Public Law 106-113, enacted November 29, 1999. The statutory provisions addressed in the FAL are effective on the date of enactment of the Act containing the provision. The Energy and Water Development Appropriations Act, 2003 and the Department of Interior and Related Agencies Appropriations Act, 2003, were enacted on February 20, 2003.

When Does This FAL Expire?

This FAL remains in effect until superseded or canceled. This FAL supersedes FAL 2002-02 dated January 8, 2002.

Who is the Point of Contact?

Contact Jackie Kniskern of the Office of Procurement and Assistance Policy by telephone at (202) 586-8189 or by email at jacqueline.kniskern@pr.doe.gov.

What is the Purpose of this FAL?

This FAL provides Contracting Officers and grants personnel guidance regarding the implementation of legislative provisions contained in the FY 2003 appropriations act.

What is the Background?

The guidance provided in this FAL is the same as the guidance provided in FAL 2002-02 and results from the following statutory requirements:

Lobbying Restrictions (Energy and Water Act §501/Interior Act §302)

The Energy and Water Act prohibits the use of funds appropriated, either directly or indirectly, to influence congressional action on any legislation or appropriations matters pending before Congress, other than to communicate to Members of Congress as described in section 1913 of Title 18, United States Code. The Interior Act prohibits the use of funds appropriated under the Act for any activity or the publication of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete.

Purchase of American-Made Equipment and Products—Sense of Congress Energy and Water Act §502(a) and (b)/FY 2000 Interior Act 307(b) and (d). This provision was made permanent in the FY 2000 Interior Act.

This provision provides that it is the sense of Congress that all equipment and products purchased with funds made available from the Energy and Water Act or the Interior Act should be American-made and requires the Department to notify awardees of this statement.

Compliance with Buy American Act (FY 2000 Interior Act §307(a) and (d)). This provision was made permanent in the FY 2000 Interior Act.

This provision provides that none of the funds made available under the Interior Act may be expended by an entity unless the entity agrees that in expending the funds the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c; popularly known as the "Buy American Act").

What is the Guidance Included in the FAL?

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List of Energy & Water Act and Interior Act Programs

I. Lobbying Restrictions

A. Lobbying Restrictions (Energy and Water Act 2003)

Contracting Officers must incorporate the following clause into existing and new financial assistance awards, when funds made available under the FY 2003 Energy and Water Development Appropriations Act are obligated on the award:

LOBBYING RESTRICTION (ENERGY AND WATER ACT 2003)

The awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S. C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

B. Lobbying Restrictions (Interior Act, 2003)

Contracting Officers must incorporate the following clause into existing and new financial assistance awards, when funds made available under the FY 2003 Interior and Related Agencies Appropriation Act are obligated on the award:

LOBBYING RESTRICTION (INTERIOR ACT 2003)

The awardee agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

II. Purchase of American-made Equipment and Products-Sense of Congress

Contracting Officers must incorporate the following notice into existing or new financial assistance awards, when funds made available under the FY 2003 Energy and Water Development Appropriations Act or any Interior or Related Agencies Appropriation Act after FY 2000 are obligated on the award:

*NOTICE REGARDING THE PURCHASE OF
AMERICAN-MADE EQUIPMENT AND PRODUCTS-
SENSE OF CONGRESS*

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

(End of Notice)

III. Compliance with Buy American Act

Contracting Officers must incorporate the following clause into existing and new financial assistance awards, when funds made available under any Interior Act, after fiscal year 2000, are obligated on the award:

COMPLIANCE WITH BUY AMERICAN ACT

In accepting this award, the recipient agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a - 10c, popularly known as the "Buy American Act"). The recipient should review the provisions of the Act to ensure that expenditures made under this award are in accordance with it.

(End of Clause)

Attachment

List of Energy & Water Act and Interior Act Programs

This list is provided to assist you in determining the application of the appropriate provisions.

Energy and Water Act (Programs)

Energy Supply
Non-Defense Environmental Management
Uranium Facilities Maintenance and Remediation
Science
Nuclear Waste Disposal
Departmental Administration
Office of Inspector General
Power Marketing Administrations
Federal Energy Regulatory Commission
National Nuclear Security Administration
Defense Environmental Management
Defense Nuclear Waste Disposal
Energy Security and Assurance
Security
Intelligence
Counterintelligence
Independent Oversight and Performance Assurance
Environmental, Safety and Health
Worker and Community Transition
Hearing and Appeals

Interior Act (Programs)

Naval Petroleum and Oil Shale Reserves
Elk Hills School Lands Fund
Strategic Petroleum Reserve
Clean Coal Technology
Economic Regulation
Energy Information Administration
Energy Conservation
Fossil Energy Research & Development

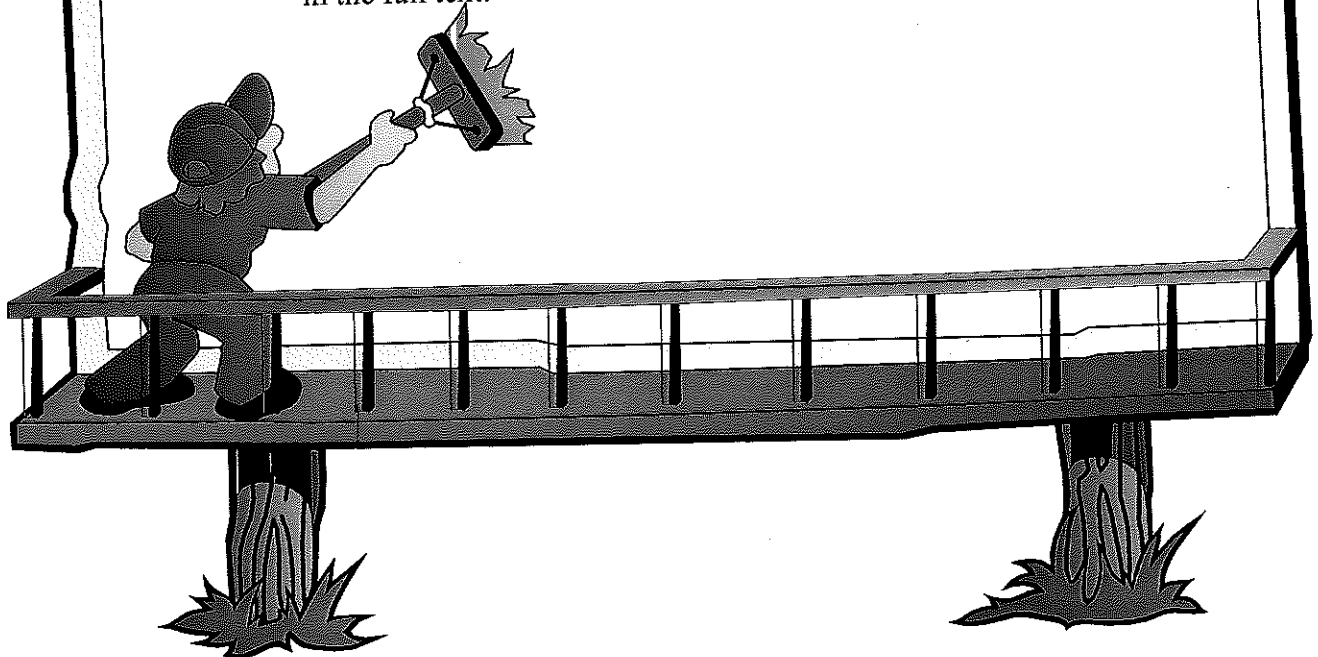


Headquarters Policy Flash

DATE: June 4, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circulars (FAC) 2001-14 and Proposed Rule
FAR Part 27 Rewrite in Plain Language**

SUMMARY: This Policy Flash summarizes the final and interim rules discussed in FAC 2001-14 and the plain language rewrite of FAR Part 27, which were published in the Federal Register on May 22, 2003, at 68 FR 28078 and May 28, 2003, at 68 FR 31790, respectively. Contracting personnel should review the details of each item of the FAC and the proposed rule in the full text.



FLASH 2003-14
(June 4, 2003)

A. Federal Acquisition Circular (FAC) 2001-14

The following eight items are in **FAC 2001-14**, summaries for each FAR rule follow the specific item number and effective date. The FAC is available via the Internet at <http://www.acqnet.gov/far>

1. Geographic Use of the Term "United States" (FAR Case 1999-400)

Effective Date: June 23, 2003

This final rule clarifies the use of the term "United States" when used in a geographic sense. As defined in the FAR 2.1, Definitions, the United States includes the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in that specific part or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This final rule-

- Corrects and updates references to the United States throughout the FAR; and
- Creates a new definition of "outlying areas" of the United States, encompassing all outlying commonwealths, territories, and minor outlying islands.

2. Miscellaneous Cost Principles (FAR Case 2001-029)

Effective Date: June 23, 2003

This final rule published as a proposed rule in the Federal Register at 67 FR 13072, March 20, 2002, is converted to a final rule with changes. This final rule-

- Deletes the cost principle concerning transportation costs; and
- Revised the cost principles concerning cost of money, other business expenses, and deferred research and development costs.

FLASH 2003-14
(June 4, 2003)

3. Prompt Payment Under Cost-Reimbursement Contracts for Services (FAR Case 2000-308)

Effective Date: May 23, 2003

Applicability: *This final rule applies to cost-reimbursement contracts for services, irrespective of award date, if interim payments requests under such contracts are due on or after December 15, 2000. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.*

This final rule converts, without change, the interim rule published in the Federal Register at 66 FR 53485, October 22, 2001. The interim rule eliminated the prior FAR regulatory guidance and clause prohibiting interest payment as a penalty for late payment of interim finance payments under a cost reimbursement contract. In addition, the interim rule added new regulatory guidance and clause providing for late payment penalty interest whenever an interim payment under a cost reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from the contractor. In addition, the final rule makes clear that agencies may not pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000 as published by OMB in the Federal Register at 65 FR 78403, December 15, 2000 and 67 FR 79515, December 30, 2002.

4. Electronic Signatures (FAR Case 2000-304)

Effective Date: June 23, 2003

This final rule amends the FAR to clarify that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

5. Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003-001)

Effective Date: May 22, 2003

This interim rule amends FAR Part 8, Required Sources of Supplies and Services. The final rule-

- Increases the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at FAR 8.606(e) from \$25 to \$2,500;
- Eliminates the criterion that requires delivery within 10 days; and

FLASH 2003-14
(June 4, 2003)

- Requires that Federal agencies not make purchases from FPI of products on their schedule that are at or below the \$2500 threshold. However, provides that Federal agencies may continue to consider and purchase products from FPI that are at or below \$2500.

6. Past Performance Evaluation of Federal Prison Industries (FAR Case 2001-35)

Effective Date: June 23, 2003

This is a final rule revising FAR Subparts 8.6 and 42.15 to require agencies to evaluate Federal Prison Industries (FPI) contract performance. This rule-

- Permits Federal customers to rate FPI's performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts;
- Provides that this change will give FPI the same opportunity given private sector firms to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically; and
- Provides that the requirements of FAR 8.602, Policy, and 8.605, Clearances, remain unchanged but that the information gathered during past performance may be used to support a clearance request under FAR 8.605.

7. Contract Terms and Conditions Required to Implement Statute or Executive Orders-Commercial Items (FAR Case 2000-009)

Effective Date: June 23, 2003

This final rule amends the FAR to update the clause list regarding commercial items contract terms and conditions required to implement statute or Executive orders. The rule-

- Ensures that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list;
- Deletes any post-FASA items from the list that do not cite a specific applicability to commercial items;

FLASH 2003-14
(June 4, 2003)

- Adds the pre-FASA clauses and alternates that were inadvertently left off the list; and
- Adds the date to each clause on the list to identify what revision of the listed clause applies when this clause is added to a contract.

8. Technical Amendments

Effective Date: June 23, 2003

The final rule amends the FAR in order to update references and make editorial changes.

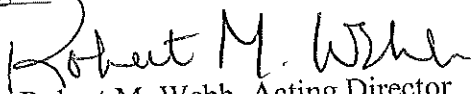
B. Notice of Proposed Rulemaking

The following item was published in the Federal Register on May 28, 2003, at 68 FR 31790. The notice of proposed rulemaking is available via the Internet at <http://www.acqnet.gov/far>

The proposed rule is to amend the FAR to clarify, streamline, and update guidance and clauses on patents, data, and copyrights to provide a more logical presentation of this complex material. In addition, this rulemaking constitutes a rewrite of FAR Part 27 and its associated clauses. Part 27 implements a number of statutes and executive orders pertaining to patents, data, and copyrights.

The rulemaking should be viewed in its entirety in order to formulate substantive comments. The Office of Procurement and Assistance Policy will consolidate DOE comments on this proposed rulemaking. Comments are to be forwarded to Robert Webb no later than July 11, 2003. Robert Webb can be reached on (202) 586-8264 or via the e-mail at robert.webb@pr.doe.gov

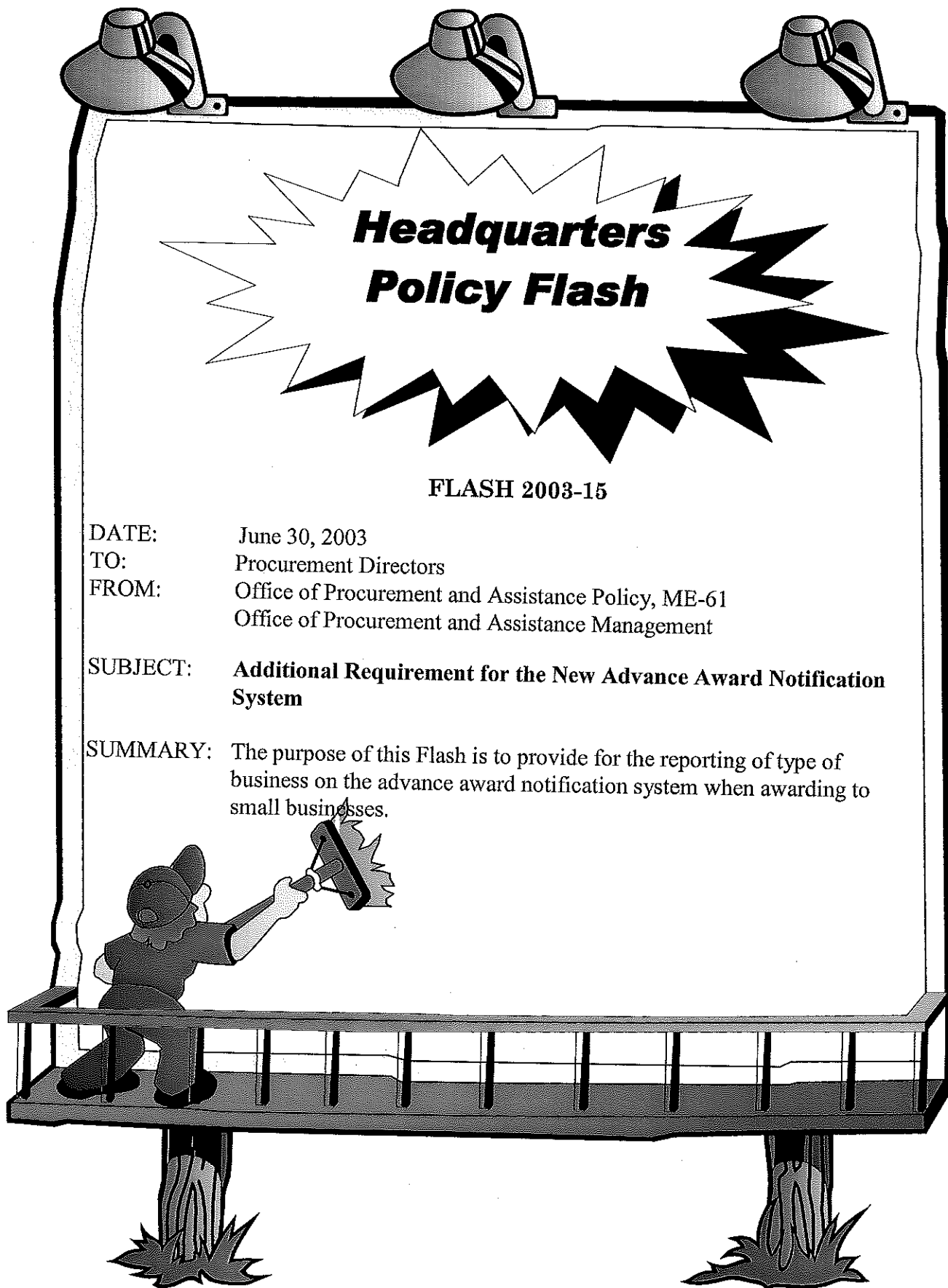
Questions concerning this Flash should be directed to Denise Wright at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov.


Robert M. Webb, Acting Director
Office of Procurement and
Assistance Policy

Attachments

cc:

PPAG Members

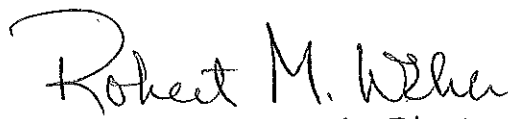


FLASH 2003-15
June 30, 2003

The purpose of this Policy Flash is to add a requirement to the Advance Award Notification System to identify the type of business when making an award to a small business. This guidance supplements the instructions in Flash 2001-27 – Implementation of New Advance Award Notification System, dated November 14, 2001.

- ✓ For prime or subcontract awards made to small businesses (shown in Item 20 of the Individual Procurement Action Report as Code A11, A22 and A33), begin the entry in Block 9 of DOE F 4220.10 with a sentence identifying that the award was made to a small business and any relevant subclass, e.g., 8(a), HUBZone, disadvantaged, woman-owned or veteran-owned.

Please contact Jackie Kniskern at (202) 586-8189 or via email at jacqueline.kniskern@pr.doe.gov with any questions on the new requirement.


Robert M. Webb, Acting Director
Office of Procurement
and Assistance Policy

cc: PPAG Members



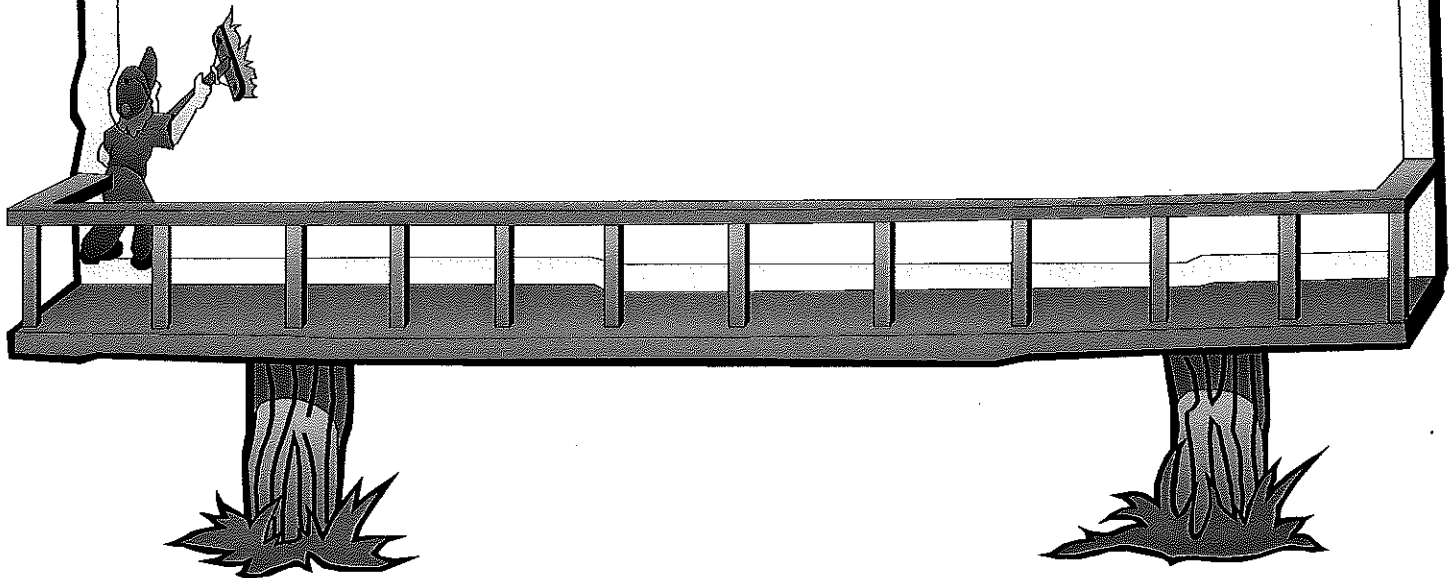
HEADQUARTERS FLASH POLICY

FLASH POLICY 2003-18

DATE: August 5, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Foreign Ownership Matrix

SUMMARY: For contracts subject to Foreign Ownership, Control and Influence processing (those requiring access authorizations (security clearances) for contractor employees, and a facility clearance for the contractor), Contracting Officers



FLASH 2003-18

may need to acquire significant documentation of ownership. The documentation varies depending on the type of ownership. The NNSA Service Center and The Office of Safeguards and Security Policy have developed a matrix to help guide you through the requirements.


Contracts that require access to restricted data or special nuclear material require access authorizations (security clearances) for contractor employees and a facility clearance for the contracting organization. When a solicitation is issued which will require access authorizations and facility clearances, it must include a solicitation provision, Facility Clearance, at DEAR 952.204-73, as well as the Security clause at DEAR 952.204-2. One of the considerations before granting or denying a facility clearance is the nature of any foreign ownership and the degree to which such foreign ownership might control or influence the operations or management of that organization such that security interest might be compromised.

Information on which to make the foreign ownership decision is collected through use of the Standard Form 328, Certificate Pertaining to Foreign Interests, and it's supporting documentation. Supporting documentation includes a Summary FOCI Data Sheet, a Representative of a Foreign Interest Statement, and a list of Owners, Officers, Directors, and Executives. Depending on the type of business involved and the extent of foreign ownership, there may be additional supporting documents required, examples include an individual's tax return for a sole proprietorship or an annual report to shareholders for a publicly traded corporation.

The Albuquerque Office of Contracts and Procurement, with the help of the Headquarters Security Policy Staff, has developed the attached FOCI Requirements Matrix. The columns across the matrix identify the type of ownership ranging from a sole proprietorship to a college/university. The rows of the matrix relate the types of information being collected such as a business structure, standard information, financial interest, etc.. Additional information may be found in DOE 470.1.

Thanks to Teresa Loschke, AL, and Lois Todd, SO-11 for developing the matrix.

For questions related to this Flash, contact Richard Langston at (202) 586-8247 or via e-mail at Richard.Langston@PR.DOE.GOV


Robert M. Webb
Acting Director

Attachment



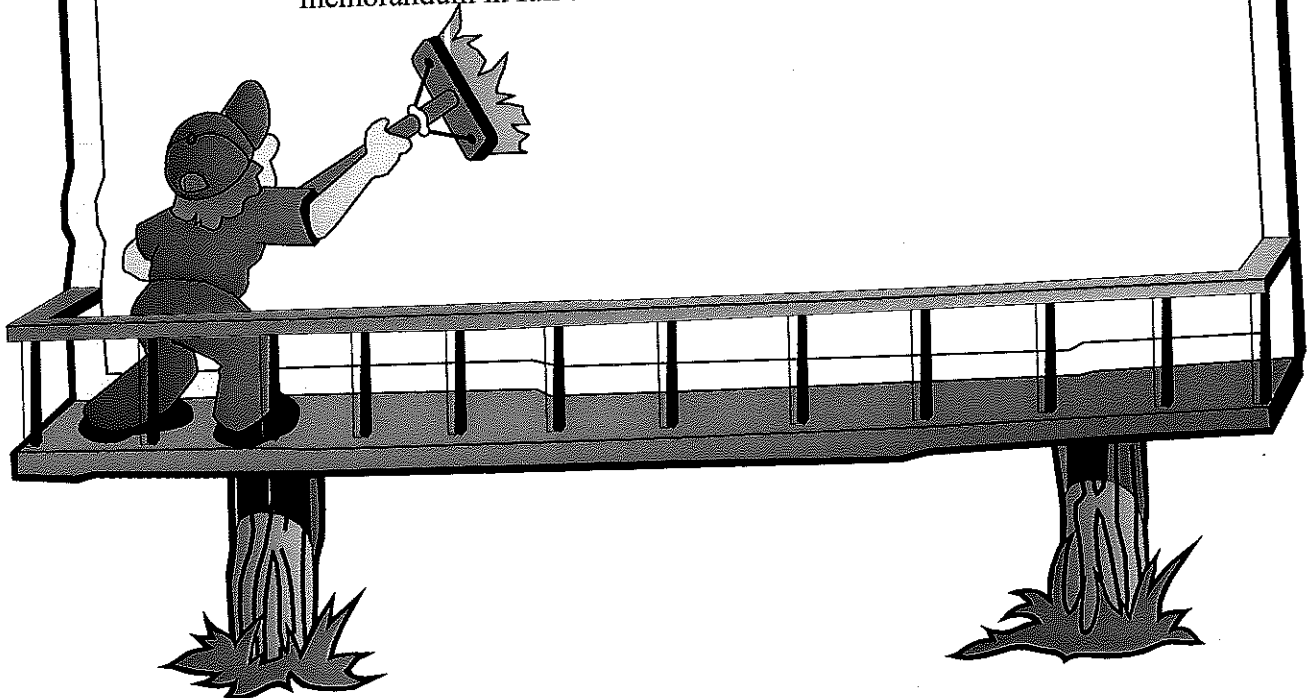
Headquarters Policy Flash

FLASH 2003-17

DATE: July 30, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Office of Federal Procurement Policy Memorandum - Applicability of FAR Part 12 to Construction Acquisitions**

SUMMARY: This Flash transmits a memorandum from the Office of Federal Procurement Policy (OFPP) clarifying the applicability of FAR Commercial Items procedures relative to construction acquisitions. Contracting personnel should review the details of the attached memorandum in full text.



FLASH 2003-17
July 30, 2003

In her July 3, 2002, memorandum, the Administrator of OFPP, Angela Styles, reminds agencies of their responsibilities in the acquisition of Construction Services under FAR Part 12 or Part 36 procedures, explaining that OFPP believes there are rare instances when Part 12 procedures should be used for new construction or non-routine alteration and repair services. Given the amount of risk associated with these types of construction acquisitions, it would be in the Government's best interest to utilize the existing FAR Part 36 procedures.

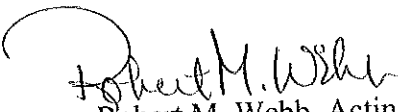
OFPP has cited effects making it impractical to use Part 12 procedures when acquiring construction services; when-

- Application of FAR Part 12 procedures to complex construction contracts results in an inequitable distribution of risk;
- FAR Part 12 lacks critical clauses sufficient to handle common circumstances associated with new construction or non-routine alteration and repair, such as, differing site conditions, change orders, and suspension of work; and
- New construction projects and non-routine alteration and repair involve a high degree of variability among the factors affecting contract performance.

FAR Part 12 procedures and clauses are best suited for certain types of construction acquisitions, such as, routine painting, carpeting, hanging drywall, or everyday electrical or plumbing work, and any simple noncomplex service. Accordingly, Ms. Style's memorandum asks that contracting officers consider the particular circumstance of each acquisition and apply the appropriate method of acquiring construction services based on the risk assessment determined.

Note: Most of DOE's construction occurs under the Management and Operating contracts. Such purchases should already be standardized in the contractor's purchasing system, which regulates the flowdown of appropriate terms and conditions.

Please address your comments and any questions relating to this Flash, to Denise P. Wright on (202) 586-6217 or via e-mail at Denise.Wright@hq.doe.gov


Robert M. Webb, Acting Director
Office of Procurement and
Assistance Policy

Attachment
cc: PPAG Members

July 3, 2003

MEMORANDUM FOR AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM: Angela B. Styles (signed)
Administrator

SUBJECT: Applicability of FAR Part 12 to Construction Acquisitions

Questions periodically arise as to whether construction needs may be acquired using the policies of FAR Part 12, which addresses the acquisition of commercial items. For the reasons discussed below, Part 12, as currently promulgated, should rarely, if ever, be used for new construction acquisitions or non-routine alteration and repair services. In accordance with long-standing practice, agencies should apply the policies of FAR Part 36 to these acquisitions. Part 36 incorporates provisions and clauses that are generally consistent with customary commercial practices in the construction industry. Part 12 could be used in limited circumstances involving construction contracting -- primarily for routine alteration and repair services as well as for acquisitions of commercial construction materials and associated ancillary services.

The provisions and clauses in FAR Part 36 address all fundamental aspects of construction contracting. Part 36 applies well-established commercial principles that are designed to result in an equitable distribution of risk between the government and contractors. In doing so, Part 36 enables agencies to gain easy access to marketplace capabilities.

By contrast, FAR Part 12 lacks clauses for handling critical circumstances common to construction efforts, especially those involving new construction or non-routine alteration and repair services. Clauses that would typically be expected in these efforts include those addressing differing site conditions, change orders, and suspension of work. The gap in coverage reflects the fact that construction contracting was not generally contemplated when Part 12 was promulgated. New construction projects and complex alteration and repair, in particular, involve a high degree of variability, including innumerable combinations of site requirements, weather and physical conditions, labor availability, and schedules. The current coverage in Part 12 fails to allocate risk in a manner that takes into account the nature of these activities.

Contracting for new construction or complex alternations and repair work without the protections of the Part 36 provisions and clauses would likely force contractors to include contingencies in their offers that would unnecessarily drive up construction costs

borne by the taxpayer. Increased risk also could discourage contractors from bidding on federal projects. Small businesses, who may lack the financial ability to take on higher levels of risk, may find participation in federal construction contracting to be especially difficult which, in turn, could deprive agencies of the innovation and ingenuity that small businesses offer when given the chance to compete. Simply put, if Part 36 is not used, an agency may be hard pressed to obtain the marketplace competition needed to negotiate fair and reasonable prices on these construction projects.

This memorandum is not intended to limit the goal of FAR Part 12, which is to ensure agencies are effectively positioned to take full advantage of the commercial marketplace and the value and efficiencies the marketplace generates. In fact, Part 12 clauses generally are suited for certain types of construction activities that lack the level of variability found in new construction and complex alteration and repair. In particular, Part 12 generally may be suited for routine painting or carpeting, simple hanging of drywall, everyday electrical or plumbing work, and similar noncomplex services, as well as for purchases of commercial construction material and associated ancillary services. Of course, as part of acquisition planning, contracting officers need to consider the particular circumstances of a given acquisition (e.g., the likelihood of a differing site condition) to determine if the current clauses in Part 12 properly allocate risk.

Agencies are reminded that when they proceed with a construction acquisition under *either* Part 36 or Part 12, they must adhere to the policies of FAR Subpart 22.4. This subpart addresses labor standards for contracts involving construction.

I appreciate your careful consideration of this memorandum and ask that you distribute the memorandum widely to contracting, program, legal, and other agency personnel responsible for construction contracting within your agency. I also ask that you promptly review any agency guidance on the applicability of FAR Part 12 to construction acquisitions and change or rescind agency guidance, as necessary, to ensure consistency with this memorandum. Questions regarding this memorandum may be referred to Mathew Blum of my staff at (202) 395-4953.



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-19

DATE: August 26, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Office of Federal Procurement Policy (OFFP) Determination of
Executive Compensation Benchmark Amount**

SUMMARY: The Administrator of OFFP has determined that the "benchmark compensation amount" allowable under government contracts is \$405,273 costs incurred during a contractor's fiscal year (FY) 2003. This determination was made pursuant to Section 39 of the OFFP Act (41 U.S.C. 435) and was published in the Federal Register Vol.68, No.85, May 2, 2003.

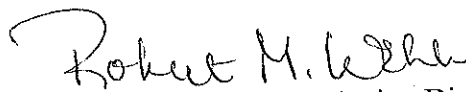
FLASH 2003-19

This "benchmark compensation amount" is to be used for contractor FY 2003 and subsequent contractor FYs unless and until revised by OFFP. This benchmark compensation amount applies to contract costs incurred after January 1, 2003, under covered contracts of both defense and civilian procurement agencies, as specified in Section 808 of Pub. L.105-85.

This "benchmark compensation amount" supersedes the amount cited in Headquarters Policy Flash 2002-18, May 14, 2002.

Applicability of the FAR to M&O contracts is addressed at 48 CFR 31.205-6(p) and 48CFR 970.3102-05-6(p), respectively.

For questions related to this Flash, contact Terry Sheppard at (202) 586-8193 or via e-mail at terry.sheppard@hq.doe.gov


Robert M. Webb, Acting Director
Procurement and Assistance
Management Policy

Cc: PPAG Members



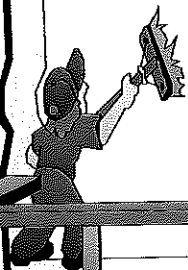
HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-20

DATE: August 27, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Acquisition Letter 2003-04, "Value Engineering"

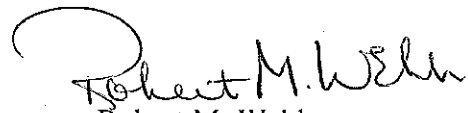
SUMMARY: Acquisition Letter 2003-04, "Value Engineering," was issued on August 25, 2003. It provides Contracting Officers guidance on the application of value engineering (VE) to DOE management and operating contracts and other contracts for the performance of work at current or former management and operating contract sites and facilities that would require or benefit from VE.



The Acquisition Letter discusses the challenges of applying value engineering effectively in management and operating and similar contracts, provides deviations to the affected FAR Value Engineering clauses, specifies when the deviations may be appropriate, and requires removal of the DEAR clause on Cost Reduction, 48 CFR 970.5215-4, when using value engineering clauses.

This AL does not apply to National Nuclear Security Administration (NNSA) activities unless otherwise directed by NNSA officials.

Contact Michael Righi at either (202) 586-8175 or Michael.Righi@hq.doe.gov if you have any questions.

A handwritten signature in black ink, appearing to read "Robert M. Webb". The signature is fluid and cursive, with a large initial "R" and "W".

Robert M. Webb
Acting Director,
Procurement and Assistance Policy

Attachment



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-22

DATE: September 4, 2003

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Terms and Conditions for Subcontracts between DOE National Laboratories and Scientific Institutes in the New Independent States (NIS) of the Former Soviet Union, Acquisition Letter 95-14

SUMMARY: The subject AL was issued on November 17, 1995, and continues to supply DOE-approved terms and conditions for those subcontracts. The tax treatment applied to these subcontracts by the NIS depends upon the NIS interpretation of the rights acquired by the DOE laboratory involved and the United States.

DOE has a statutory duty, pursuant to Section 3136 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) to avoid tax payments to Russia associated with the Initiative for Proliferation Prevention. This Flash authorizes changes to the intellectual property provisions necessary to retain tax free treatment for those subcontracts.

GUIDANCE: Where necessary to assure tax free treatment for the subject subcontracts, cognizant DOE contracting officers may allow the contracting national laboratory to make the following changes to the terms and conditions that were transmitted by AL 95-14.


1. Attachment 2, Clause III, Rights in Data-General:

- A. Delete paragraph (a)(7) and redesignate paragraphs (a)(8) and (a)(9) as (a)(7) and (a)(8), respectively.
- B. At paragraph (b)(1), replace the term "unlimited rights" with the phrase "paid up license rights to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so."
- C. At paragraph (c)(3), replace the term "royalty-free" with the term "paid up."

2. Attachment 3, Clause III, Rights in Data-General:

- A. Delete paragraph (a)(7) and redesignate paragraphs (a)(8) and (a)(9) as (a)(7) and (a)(8), respectively.
- B. At paragraph (b)(1), replace the term "unlimited rights" with the phrase "paid up license rights to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so."
- C. At paragraph (c)(3), replace the term "royalty-free" with the term "paid up."

For questions related to this Flash, contact me at (202)586-8264 or via e-mail at Robert.Webb@hq.doe.gov


Robert M. Webb
Acting Director
Office of Procurement and
Assistance Policy, OMBE



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-22

DATE: August 27, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Amendment to 10 CFR Part 600 and Notification of New OMB Grants
Management policies

SUMMARY: This Policy Flash distributes a final rule and provides notification of two
new grants management policies.

1. Amendment to 10 CRF Part 600.

A final rule that amends the Department's financial assistance regulations was published on August 21, 2003 at 68 FR 50646 (See attachment). This rulemaking establishes administrative requirements for financial assistance awards to for-profit organizations. The rule will become effective on October 1, 2003.

2. Notification of Two New OMB Grants Management Policies

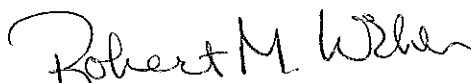
OMB recently published two new grants management policies. Our target date for issuing a Financial Assistance Letter (FAL) implementing these policies is September 30, 2003. We are providing this notification to help you plan for FY 2004 financial assistance solicitations.

The new grants management policies are:

- Applications for new or renewal grants or cooperative agreements received on or after October 1, 2003, including applications of plans submitted under mandatory grant programs, must include the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number. The DUNS number will be a required data element on the application form (e.g., SF 424 and DOE F 4620.1). See 68 FR 38402, dated June 27, 2003.
- Program announcements of funding opportunities (e.g., solicitations) must be in the standard government-wide announcement format. We have developed a DOE-wide template to implement the standard announcement format. The Word® announcement template will be available on IIPS. A FAL will provide additional guidance on the DOE announcement template. This template must be used for announcements of funding opportunities that would result in the award of discretionary grants and cooperative agreements. See 68 FR 37370, dated July 23, 2003.

If you have questions regarding the rulemaking or the new OMB grants management policies, contact Trudy Wood at (202) 586-5625 or by e-mail at trudy.wood@hq.doe.gov.

Attachment


Robert M. Webb
Acting Director
Office of Procurement and
Assistance Policy, OMBE



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-23

DATE: September 9, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Amendment of the Department of Energy Acquisition Regulation (DEAR) to Implement Executive Order 13149, Greening the Government Through Federal Fleet And Transportation Efficiency

SUMMARY: This Policy Flash transmits a summary of a rule published September 2, 2003, at 68 FR 52129, amending the DEAR to implement another of the Greening the Government Executive Orders.

POLICY FLASH

2003-23

The rule adds a new contract clause requiring management and operating contractors, when managing Government-owned fleet vehicles, to comply with the goals and requirements of Executive Order 13149. These goals and requirements include increased fuel efficiency in conventionally fueled vehicles, as well as increased use of alternative fueled vehicles, and the increased use of alternative fuels in those vehicles.


DOE, in conjunction with the General Services Administration, and the Office of Management and Budget, helped plan and implement this program and monitors the progress toward goal accomplishment of the other Federal agencies and itself. It is very important that the management and operating contractors operating DOE fleet vehicles comply with these requirements. The clause specified by this rule is a mandatory clause for management and operating contractors with motor vehicle fleet operations. Contracting Officers are strongly encouraged to add the clause at the next fee negotiation following the effective date of the rule. The clause should be included in new management and operating contracts.

Section 507³ of the Executive Order also requires the use of environmentally preferable motor vehicle products, i.e., re-refined motor vehicle lubricating oil, recycled engine coolant, and retread tires. These products have already been designated by the Environmental Protection Agency and are included in the Comprehensive Procurement Guidelines. Those requirements have already been incorporated in the Federal Acquisition Regulation as part of the Affirmative Procurement Program required by FAR Subpart 23.4.

The Electronic DEAR on the Home Page has been updated to reflect this rule.

For questions related to this Flash, contact Richard Langston at (202) 586-8247 or via e-mail at Richard.Langston@PR.DOE.GOV

Attachment



Robert M. Webb
Acting Director
Office of Procurement and
Assistance Policy, OMBE



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-23

DATE: September 10, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Amendment of the Department of Energy Acquisition Regulation (DEAR) to Implement Executive Order 13149, Greening the Government Through Federal Fleet And Transportation Efficiency

SUMMARY: This Policy Flash transmits a summary of a rule published September 2, 2003, at 68 FR 52129, amending the DEAR to implement another of the Greening the Government Executive Orders.

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2003-23

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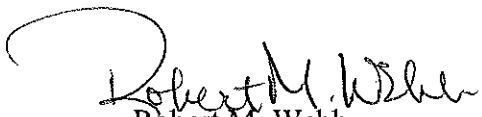
DOE, in conjunction with the General Services Administration, and the Office of Management and Budget, helped plan and implement this program and monitors the progress toward goal accomplishment of the other Federal agencies and itself. It is very important that the management and operating contractors operating DOE fleet vehicles comply with these requirements. The clause specified by this rule is a mandatory clause for management and operating contractors with motor vehicle fleet operations. Contracting Officers are strongly encouraged to add the clause at the next fee negotiation following the effective date of the rule. The clause should be included in new management and operating contracts.

Section 403 of the Executive Order also requires the use of environmentally preferable motor vehicle products, i.e., re-refined motor vehicle lubricating oil, recycled engine coolant, and retread tires. These products have already been designated by the Environmental Protection Agency and are included in the Comprehensive Procurement Guidelines. Those requirements have already been incorporated in the Federal Acquisition Regulation as part of the Affirmative Procurement Program required by FAR Subpart 23.4.

The Electronic DEAR on the Home Page has been updated to reflect this rule.

For questions related to this Flash, contact Richard Langston at (202) 586-8247 or via e-mail at Richard.Langston@PR.DOE.GOV

Attachment



Robert M. Webb

Acting Director
Office of Procurement and
Assistance Policy, OMBE

Executive Order 13149**Presidential Documents****Executive Order 13149 of April 21, 2000****Greening the Government Through Federal Fleet and Transportation Efficiency**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 et seq.), the Energy Policy Act of 1992 (Public Law 102-486), section 301 of title 3, United States Code, and the Energy Conservation Reauthorization Act of 1998 (Public Law 105-388), it is hereby ordered as follows:

PART 1 PREAMBLE

Section 101. Federal Leadership. The purpose of this order is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles (AFVs) and alternative fuels. Reduced petroleum use and the displacement of petroleum by alternative fuels will help promote markets for more alternative fuel and fuel efficient vehicles, encourage new technologies, enhance the United States' energy self-sufficiency and security, and ensure a healthier environment through the reduction of greenhouse gases and other pollutants in the atmosphere.

PART 2 GOALS

Sec. 201. Reduced Petroleum Fuel Consumption. Each agency operating 20 or more motor vehicles within the United States shall reduce its entire vehicle fleet's annual petroleum consumption by at least 20 percent by the end of FY 2005, compared with FY 1999 petroleum consumption levels.

Sec. 202. Performance Strategies. Agencies have numerous options for developing a strategy to meet the petroleum reduction levels established in section 201 of this order. Measures include: the use of alternative fuels in light, medium, and heavy-duty vehicles; the acquisition of vehicles with higher fuel economy, including hybrid vehicles; the substitution of cars for light trucks; an increase in vehicle load factors; a decrease in vehicle miles traveled; and a decrease in fleet size. Each agency will need a strategy that includes most, if not all, of these measures, but can develop a strategy that fits its unique fleet configuration and mission requirements. As part of the strategy, each agency should attempt to accelerate the introduction of vehicles meeting Tier 2 standards. Where feasible, agencies should also consider procurement of innovative vehicles, such as hybrid electric vehicles, capable of large improvements in fuel economy. The strategy should also attempt to minimize costs in achieving the objectives of this order. In developing its strategy, each agency shall include the following:

- a. AFV Acquisition and Use of Alternative Fuels. Each agency shall fulfill the acquisition requirements for AFVs established by section 303 of the Energy Policy Act of 1992. Agencies shall use alternative fuels to meet a majority of the fuel requirements of those motor vehicles by the end of FY 2005. Section 402 of this order addresses related issues of alternative fuel infrastructure availability and the ability to track alternative fuel usage data; and

- b. Acquisition of Higher Fuel Economy Vehicles. Agencies shall increase the average EPA fuel economy rating of passenger cars and light trucks acquired by at least 1 mile per gallon (mpg) by the end of FY 2002 and at least 3 mpg by the end of FY 2005 compared to FY 1999 acquisitions.

PART 3 ORGANIZATION AND ACCOUNTABILITY

Sec. 301. Leadership Responsibilities. The Office of Management and Budget (OMB), the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the General Services Administration (GSA) shall be responsible for providing leadership to the other Federal agencies in implementing programs to meet the goals of this order. Therefore, they shall perform the following activities:

a. OMB shall:

1. designate a senior official to assume the responsibility for coordinating the collection of agency budget and data submissions pursuant to this order;
2. amend and issue budget guidance to the agencies that requires each agency to identify in its annual budget submission the funding necessary to meet the requirements of this order;
3. review annual agency budget submissions to determine adequacy in meeting the goal of this order and to balance requests for increased funding to support achievement of the goals against other mission priorities for the agency; and
4. review agency submissions for the annual report to the Congress, after budget decisions are made.

b. DOE shall:

1. issue guidance to agencies, within 90 days of the issuance of this order, on preparation and submission of agency strategies for complying with this order and the collection and annual reporting of data to demonstrate compliance with this order;
2. review and evaluate agency strategies prior to their submission to OMB;
3. provide OMB with copies of the agency strategy evaluations;
4. provide whatever other support OMB requires to facilitate performance of OMB's role;
5. establish the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and other applicable statutes and policies;
6. educate personnel from other agencies on the requirements of this order, the data collection and reporting system, best practices for improving fleet fuel efficiency, and methods for

successfully acquiring and using AFVs;

7. review agencies' annual data submissions for accuracy and produce a scorecard of agency and overall Federal compliance with this order and other applicable statutes and policies; and
 8. report to the President annually on compliance with the order, including the scorecard and level of performance in meeting the goals of the agencies' strategies.
- c. EPA shall support DOE and GSA in their efforts to assist the agencies in the accelerated purchase of Tier 2 vehicles.
 - d. GSA shall develop and implement strategies that will ease agencies' financial and administrative burdens associated with the acquisition of AFVs, including:
 1. Agencies shall be allowed to replace their conventionally-fueled vehicles with AFVs by making an initial lump-sum payment for the additional acquisition cost of the AFV and shall be allowed to contribute to the higher replacement costs of the AFV incrementally over the term of the lease, and have the option of averaging AFV incremental costs across the agency fleet as provided by the Energy Policy Act of 1992.
 2. Within 120 days of this order, the Administrator of GSA, in consultation with other agencies, shall:
 - A. provide a summary of agency AFV acquisition plans to potential AFV manufacturers to assist in their production planning. At least 4 months in advance of agency vehicle ordering cycles, GSA must provide to agencies the best available information on the production plans of AFV manufacturers;
 - B. develop, in coordination with DOE and EPA, methods that will help Federal fleet managers to select vehicles to improve fleet fuel efficiency and to meet Tier 2 vehicle standards; and
 - C. collaborate with its customer agencies and their procurement staff and officials to discuss and plan efforts to ensure that the GSA-leased fleet is making progress toward the goals of this order.

Sec. 302. Designation of Senior Agency Official. Within 90 days of the date of this order, the head of each agency shall designate a senior official to assume responsibility for the agency's AFV and fleet fuel efficiency programs, and for meeting the requirements of this order. Each senior agency official designated by an agency shall be responsible for:

- a. preparing an agency strategy for meeting the goals of this order, in accordance with guidance issued by DOE;
- b. submitting the agency strategy to DOE within 180 days of the issuance of this order for evaluation and submission to OMB;
- c. implementing the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on

meeting the goals of this order and reporting the data to DOE;

- d. ensuring the agency's strategy for meeting the goals of this order is incorporated in the annual budget submission to OMB; and
- e. assembling the appropriate team and resources in the agency necessary to attain the goals of this order.

Sec. 303. Management and Government Performance. Agencies may use the following management strategies to assist them in meeting the goals of this order:

- a. **Awards.** Agencies may use employee incentive programs to reward exceptional performance in implementing this order.
- b. **Performance Evaluations.** Agencies shall, where appropriate, include successful implementation of the provisions of this order in the position descriptions and performance evaluations of agency heads, the senior official, fleet managers, their superiors, and other relevant employees.

Sec. 304. Applicability. This order applies to each agency operating 20 or more motor vehicles within the United States. Agency means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

PART 4 IMPLEMENTATION

Sec. 401. Vehicle Reporting Credits. When preparing the annual report to DOE and OMB, each agency acquisition of an alternative fuel light-duty vehicle, regardless of geographic placement, shall count as one credit towards fulfilling the AFV acquisition requirements of the Energy Policy Act of 1992. Agencies shall receive one additional credit for each light-duty AFV that exclusively uses an alternative fuel and for each Zero Emission Vehicle of any size. Agencies shall receive three credits for dedicated medium-duty AFVs and four credits for dedicated heavy-duty AFVs. Agencies can also receive one credit for every 450 gallons of pure bio-diesel used in diesel vehicles.

Sec. 402. Infrastructure. To support the use of alternative fuel in AFVs, agencies should arrange for fueling at commercial facilities that offer alternative fuels for sale to the public.

- a. Agencies should team with State, local, and private entities to support the expansion and use of public access alternative fuel refueling stations;
- b. Agencies should use the authority granted to them in section 304 of the Energy Policy Act of 1992 to establish nonpublic access alternative fuel infrastructure for fueling Federal AFVs where public fueling is unavailable.
- c. Agencies are encouraged to work with DOE and GSA to resolve alternative fuel usage tracking issues with alternative and petroleum fuel providers.

Sec. 403. Procurement of Environmentally Preferable Motor Vehicle Products.

- a. Consistent with Executive Order 13101 and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962, effective 6 months after the date of this order, no Federal agency shall purchase, sell, or arrange for the purchase of virgin petroleum motor vehicle lubricating oils when re-refined motor vehicle lubricating oils are reasonably available and meet the vehicle manufacturer's recommended performance standards.
- b. Consistent with Executive Order 13101 and RCRA section 6962, in acquiring and maintaining motor vehicles, agencies shall acquire and use United States EPA-designated Comprehensive Procurement Guideline items, including but not limited to retread tires, when such products are reasonably available and meet applicable performance standards. In addition, Federal agencies should consider acquiring other recycled content products, such as tires containing a minimum of 5-10 percent post-consumer recovered rubber.
- c. Consistent with Executive Order 13101, Federal agencies are encouraged to use biobased motor vehicle products when such products are reasonably available and meet applicable performance standards.

PART 5 GENERAL PROVISIONS

Sec. 501. Revocation. Executive Order 13031 of December 13, 1996, is revoked.

Sec. 502. Statutory Authority. Agencies must carry out the provisions of this order to the extent consistent with their statutory authority.

Sec. 503. Limitations. This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

Sec. 504. Independent Agencies. Independent agencies and agencies excepted from coverage by section 304 are encouraged to comply with the provisions of this order.

Sec. 505. Government-Owned Contractor-Operated Vehicles. Agencies must ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each contractor's management contract.

Sec. 506. Exemptions for Military Tactical, Law Enforcement, and Emergency Vehicles. Department of Defense military tactical vehicles are exempt from this order. Law enforcement, emergency, and any other vehicle class or type determined by OMB, in consultation with DOE, are exempted from this order's requirements for Federal fleet fuel efficiency and alternative fuel vehicle acquisition. Agencies claiming vehicle exemptions must provide information on the number of each class or type of vehicle claimed as exempt as well as an estimate of total fuel consumption of exempt vehicles on an annual basis. Agencies should examine options for

increasing fuel efficiency in these exempt vehicles and should report actions taken to increase fuel efficiency in these vehicles or fleets. All information required by this section must be submitted annually under Part 3 of this order.

Sec. 507. Compliance.

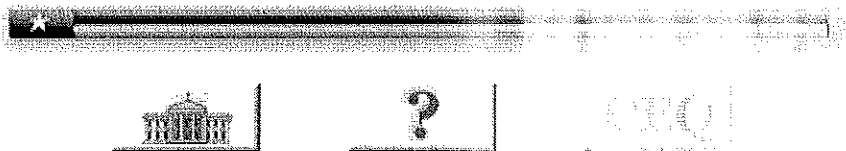
- a. If an agency fails to meet requirements of the Energy Policy Act of 1992 or this order, its report to the DOE and OMB under section 302 (c) must include an explanation for such failure and an updated strategy for achieving compliance using the agency's current and requested budgets.
- b. OMB, in consultation with DOE, may modify the compliance requirements for an agency under Part 2 of this order, if the agency is unable to comply with the requirements of that part. An agency requesting modification must show that it has made substantial good faith efforts to comply with that part. The availability and costs of alternative fuels and AFVs can be a factor in OMB's decision to modify the agency's compliance with Part 2 of this order.

Sec. 508. Definitions. Terms used in this order shall have the same definitions as those in the Energy Policy Act of 1992 and Executive Order 13101, unless specifically changed in guidance to be issued by DOE under section 301(b) of this order.

(Presidential Sig.)

THE WHITE HOUSE,

April 21, 2000.



*To submit questions and comments about CEQ NEPAnot,
please use the NEPAnot Feedback System.*



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-24

DATE: October 1, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

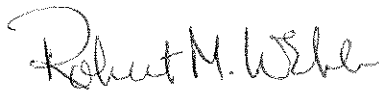
SUBJECT: Acquisition Letter 2003-05 Personal Property Management Career Development, Training and Certification Program

SUMMARY: Acquisition Letter 2003-05 was issued September 11, 2003 to establish the Department of Energy Personal Property Management Career Development, Training and Certification Program. This AL has been jointly issued by the DOE and NNSA Procurement Executives.

POLICY FLASH

2003-24

For questions related to this Flash, contact Jerry Hanley at (202) 586-4157 or via e-mail at Jerry.Hanley@hq.doe.gov



Robert M. Webb
Acting Director
Office of Procurement and
Assistance Policy, OMBE

Attachment



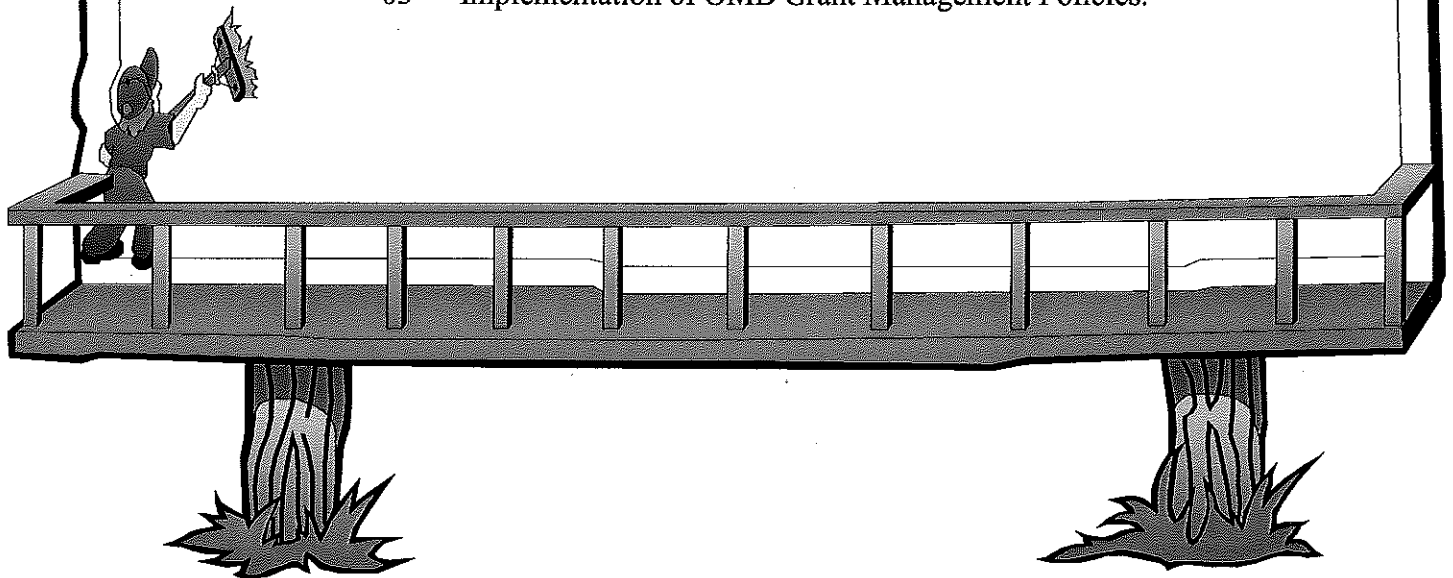
HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-25

DATE: September 17, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MB-61
Office of Procurement and Assistance Management

SUBJECT: Financial Assistance Letter Number 2003-03 – “Implementation of OMB Grant Management Policies”

SUMMARY: This Policy Flash distributes Financial Assistance Letter (FAL) No. 2003-03 – “Implementation of OMB Grant Management Policies.”




POLICY FLASH

2003-25

This FAL provides guidance on the following new financial assistance requirements:

- Applications for new or renewal grants or cooperative agreements received on or after October 1, 2003, including applications of plans submitted under mandatory grant programs, must include the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number. See Section I of the FAL.
- Program announcements of funding opportunities that result in the award of discretionary grants or cooperative agreements (e.g., solicitations) issued on or after November 1, 2003 must be in the standard government-wide announcement format. This FAL provides guidance and a DOE-wide template to implement the standard announcement format. See Section II of the FAL. Not later than October 10, 2003, grants personnel may access the Word announcement template on IIPS at the Main View (<http://e-enter.doe.gov/IIPS/busopor.nsf/ViewMenu?ReadForm>). We will try to have the template available sooner, if possible. We also plan to have DOE-wide financial assistance forms available on the Industry Interactive Procurement System (IIPS) by the middle of October.
- On or after October 1, 2003, synopses of discretionary grant and cooperative agreement funding opportunity announcements and modifications of these announcements must be posted on the Grants.gov FIND Internet site at www.FedGrants.gov, using the standard data elements/format. DOE will continue to use IIPS to post synopses of such funding opportunities. The new financial assistance data elements/format will be incorporated into IIPS. See Section III of the FAL.

For questions related to this Flash, contact Trudy Wood at (202) 586-5625 or via e-mail at trudy.wood@hq.doe.gov


Robert M. Webb
Acting Director
Office of Procurement and
Assistance Policy, OMBE

Attachment



Department of Energy
Financial Assistance Regulation

No. 2003-03
Date 09/17/03

FINANCIAL ASSISTANCE LETTER

Financial Assistance Letter is issued under the authority of the Procurement Executives of DOE and NNSA

Subject: Implementation of OMB Grant Management Policies

What is the Purpose of this Financial Assistance Letter (FAL)?

This FAL provides Contracting Officers and grants personnel guidance on the following new Office of Management and Budget (OMB) policy requirements:

- Applications for new or renewal grants or cooperative agreements received on or after October 1, 2003, including applications or plans submitted under mandatory grant programs, must include the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number.
- Program announcements of funding opportunities (e.g., solicitations) issued on or after November 1, 2003 must be in the standard government-wide announcement format.
- On or after October 1, 2003, synopses of discretionary grant and cooperative agreement funding opportunity announcements and modifications of these announcements must be posted on the Grants.gov FIND Internet site at www.FedGrants.gov, using the standard data elements/format.

How will this Change My Work Processes?

DUNS Number. The requirement to use the DUNS number will not affect your work processes. The revised SF 424 and the revised DOE F 4650.2 application forms include a DUNS number as a required element. Use the revised forms.

Announcement Format. You must use the Word version of the DOE-wide announcement template at <http://e-center.doe.gov/IIPS/busopor.nsf/ViewMenu?ReadForm> to prepare an announcement of funding opportunities that would result in the award of discretionary grants or cooperative agreements (See attached copy of the announcement template).

Grants.gov FIND. The Department has been posting synopses of financial assistance funding opportunities on the Grants.gov Find Internet site at www.FedGrants.gov since March 2003.

You will continue to use the Industry Interactive Procurement System (IIPS) to post synopses of funding opportunities on this Internet site. Any new information requirements mandated by Grants.gov will be incorporated into IIPS.

When is this FAL Effective?

This FAL is effective 10 days after the date of issuance. This FAL supersedes and cancels FAL 2003-02 "Implementation of DOE's Industry Interactive Procurement System (IIPS)."

When does this FAL Expire?

This FAL remains in effect until superseded or canceled.

Who is the Point of Contact?

Contact Trudy Wood of the Office of Procurement and Assistance Policy by telephone at (202) 586-5625 or by email at trudy.wood@hq.doe.gov.

What is the Background?

The Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106-107) directed agencies to work together to simplify and streamline Federal grant-making processes. As a result of the government-wide streamlining initiative, OMB recently published several notices and policy directives. The first notice [68 FR 38402] establishes a requirement that applications for Federal grants or cooperative agreements include the applicant's DUNS number. The second notice [68 FR 37370] establishes a government-wide standard format for publishing announcements of funding opportunities under programs that make discretionary awards of grants or cooperative agreements. The policy letter included in the *Federal Register* notice requires Federal agencies to organize announcement information in this standard format to make it easier for potential applicants to quickly find the information they need. A third notice [68 FR 37379] establishes standard data elements for electronically posting synopses of Federal agencies' financial assistance program announcements at Grants.gov FIND. The last notice [68 FR 37385] proposes a government-wide policy that would require Federal agencies to post synopses of financial assistance funding opportunities on the Grants.gov FIND Internet site at www.FedGrants.gov beginning October 1, 2003. The Grants.gov FIND Internet site at FedGrants is modeled after FedBizOpps, an Internet site established by the General Services Administration as the government-wide point of entry for access to Federal procurement opportunities. These two sites - FedBizOpps and FedGrants - will provide one stop access to Federal procurement and financial assistance opportunities. These policy notices are available on OMB's website at http://www.whitehouse.gov/omb/grants/grants_docs.html.

Guidance Included in this Financial Assistance Letter

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I. What is the new OMB policy regarding DUNS numbers?

A. What is the requirement?

After September 30, 2003, applications for new or renewal grants or cooperative agreements, including applications or plans submitted under mandatory grant programs, must include the applicant's DUNS number. The applicant is not required to submit DUNS numbers for entities with which it may enter into subawards; only the primary applicant needs to provide a DUNS number. The DUNS number will supplement, not replace, other identifiers required by statutes or regulations, such as tax identification numbers.

B. Are there any exceptions?

Yes. This requirement does not apply to: 1) an individual who would personally receive a grant or cooperative agreement award apart from any business or non-profit organization they may operate; or 2) any applicant that receives an exemption from OMB or an applicant under a program that receives an exemption from OMB.

C. What are the contracting officer's responsibilities?

The contracting officer must:

- Include the paragraph entitled "DUNS Number" (See Section IV.2.A) in the attached template in every announcement that closes on or after October 1, 2003. If you have an open announcement that has a closing/due date on or after October 1, 2003, you must amend the announcement or take other appropriate measures to inform potential applicants of this requirement. For the purposes of this requirement, announcements include any type of notification of funding opportunities, including requests for formula grant applications or plans.
- Ensure that each announcement requires that the applicant submit either a SF 424 (Rev. 9-03) or a DOE F 4650.2 (Rev. 10-03) application form. These forms include a blank for the applicant's DUNS number. These forms will be available at <http://e-center.doe.gov/IIPS/busopor.nsf/Forms?ReadForm>.
- Ensure that every entity applying for a new or a renewal grant or cooperative agreement, including a mandatory grant, provides its DUNS number in the application.

The contracting officer should work with the program offices to educate the applicant community regarding the new requirement for a DUNS number.

II. What is the new OMB policy regarding a standard format for program announcements of funding opportunities?

A. What is the requirement?

Federal agencies must use the government-wide standard format for program announcements of funding opportunities.

B. What is a program announcement?

Program announcements include any issuance used to announce funding opportunities that would result in the award of a discretionary grant or cooperative agreement, whether it is called a solicitation, program announcement, program notice, broad agency announcement, research announcement, notice of program interest, or something else.

C. How will DOE implement the standard format?

In accordance with the new OMB policy guidance, we have developed a DOE-wide announcement template that conforms with the government-wide announcement format (See attachment to this FAL). While the template includes standard language to promote more uniformity and to facilitate development, in virtually every section, the contracting officer/program official is given the flexibility to craft language that more completely and accurately defines the terms of the competition. After October 31, 2003, contracting officers/program officials must use the DOE-wide template to issue program announcements of funding opportunities.

D. How does the contracting officer complete the announcement template and post it on IIPS?

The contracting officer accesses the Word® announcement template by logging into IIPS and proceeding to the Main View. Follow the link to the template; save the template to your computer; open the template and complete it; save the completed announcement using the "save as" feature of Word ® to save the file with a unique name; then, after obtaining appropriate approvals, return to IIPS "Create FA Opportunity." Complete the "Financial Assistance Form" information (i.e., synopsis information) and attach approved announcement file to the "File Upload" section. See the IIPS user guide for more detailed instructions. The announcement file must be posted to IIPS at the same time the synopsis is sent to the Grants.gov FIND Internet site via IIPS (See Section III, C).

E. How does the contracting officer modify an announcement that has been posted on IIPS.

The contracting officer must:

- Incorporate change(s) to the announcement file by creating a conformed file that includes a line in the margin to annotate the change(s). Be sure to select "Modification" under "Announcement Type" on the funding opportunity announcement cover page and, if appropriate, change the "Due Dates."
- Post the announcement modification on IIPS as an "Accompanying Document" (See IIPS User Guide), attaching the announcement file on the "Accompanying Document" page.
- Delete the prior version of announcement file (the Word® document) from IIPS.

F. Will the announcement template be revised in the near future?

Yes. This is the first iteration of the DOE-wide announcement template. It is intended to be used for applications submitted through IIPS. During FY 2004, DOE will transition to the Grants.gov APPLY application, also called the Grants.gov "storefront". This transition will not affect your business processes since IIPS, or the successor system, will continue to provide the "backend" processes. However, it will require changes in the template.

DOE plans to revise the template to require applicants to submit their applications through the Grants.gov "storefront" as soon as the government-wide "research and research related application package" is completed so that we can incorporate all new requirements in a single revision. We expect this to happen in the second half of FY 2004. We anticipate that all applications (i.e., competitive and noncompetitive) will be submitted through the "storefront" by October 2004. Please provide any suggestions or comments for improvements in the announcement template so that we can incorporate them in the next version. We are particularly interested in additions or deletions to the pick lists.

III. What is the OMB policy regarding Grants.gov FIND?

A. What is the requirement?

Federal agencies must post synopses of discretionary grant and cooperative agreement funding opportunity announcements and modifications to the announcements at www.FedGrants.gov (the Grants.gov FIND Internet site), using a standard set of data elements, except for:

- Announcements of funding opportunities for which 100 percent of eligible applicants live outside of the United States.
- Sole source announcements of funding opportunities issued by an agency which are specifically directed to a known recipient.

B. How does this requirement affect DOE/NNSA?

DOE has been posting notices on the Grants.gov FIND Internet site at www.FedGrants.gov since March 2003 via IIPS. The new policy will result in no change to the current IIPS process. However, new government-wide data elements will be incorporated into the IIPS financial assistance funding opportunity synopsis form (web page) by October 2003. You must complete all the required information on the revised form.

C. What are the contracting officer's responsibilities?

The contracting officer is responsible for ensuring that all discretionary grant and cooperative agreement funding opportunity program announcements and modifications to the announcements are posted to the Grants.gov Find Internet site via IIPS at the same time that the announcement is posted on IIPS. The contracting officer must:

- Develop the program announcement file in accordance with Section II of this FAL.
- Ensure that the program office has a valid Catalog of Domestic Assistance (CFDA) number for the announcement.
- Go to “Create FA Opportunity” and complete the “Financial Assistance Form (i.e., synopsis information). This form includes all the required data elements for posting a synopsis on the Grants.gov Find Internet site;
- Ensure that “Yes” is checked for the field “Post to FedGrants?”; and
- Upload the announcement file to the “File Upload” section and click on “Submit Form.”

D. Do you still have to publish a notice in the *Federal Register* per 10 CFR 600.8?

Yes. We are in the process of amending 10 CFR 600.8, but we can not publish the rule until OMB has issued its final policy on Grants.gov FIND. We plan to require program offices to continue to publishing solicitation notices in the *Federal Register* through December 31, 2003. This will give potential applicants time to get use to the new Grants.gov FIND internet site. We will advise you of any changes in the publication requirements as soon as they are final.

IV. What are the requirements for announcements issued under a Program Rule?

Program Officials, who issue announcements of funding opportunities under a program rule, must comply with the new OMB grants management policies set forth in this FAL.



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-26

DATE: October 1, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Acquisition Guide Subchapter 70.11 "The Department of Energy Directives System"

SUMMARY: The purpose this Flash is to announce the issuance of Acquisition Guide Subchapter 70.11, entitled "The Department of Energy Directives System"


POLICY FLASH

2003-26

A new Subchapter 70.11 has been added to the Acquisition Guide. It provides guidance to DOE contracting officers on their responsibilities under the Department of Energy Directives System. It does not apply to NNSA. The chapter encourages contracting officers to communicate early, clearly, and often with program and technical officials to ensure appropriate directives are included in affected Site/Facility Management Contracts. It also reminds them to support the timely resolution of exemption requests by assisting program officials in analyzing impacts, obtaining concurrences, and integrating approved requests into contracts.

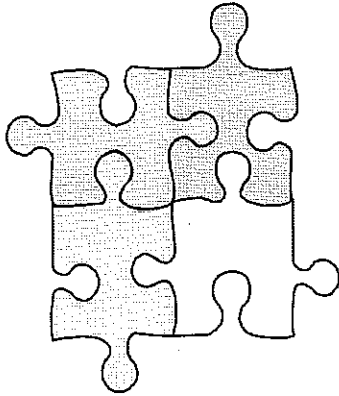
For questions related to this Flash, contact Michael Righi at (202) 586-8175 or via e-mail at Michael.Righi@hq.doe.gov

Attachment



Robert M. Webb
Acting Director
Office of Procurement and
Assistance Policy, OMBE

The Department of Energy Directives System



[Reference: DEAR 970.5204-2, Laws, regulations, and DOE Directives; DOE Order 251.1, Directive System; DOE Manual 251.1-1A, Directive System Manual.]

Overview

This section provides guidance to DOE contracting officers on their responsibilities under the Department of Energy Directives System. It does not apply to NNSA.

Background

The Department of Energy Directives System is a means by which DOE policies, requirements, and responsibilities are disseminated throughout the Department. The term "directives" encompasses Policies, Notices, Orders, Manuals, Guides, Regulations, and Technical Standards. Directives generally provide internal instruction to Federal officials. However, because of the role played by management and operating and other facility management contractors (site/facility management contractors) in implementing DOE programs and operating DOE facilities some directives may directly instruct contractors and become contract obligations by operation of the Laws, Regulations and DOE Directives clause. In this case the direction to the contractor is contained in a Contractor Requirements Document that is appended to the directive, which will be incorporated by reference into the contract as a contractor obligation.

Guiding Principles

- ✓ Communicate early, clearly, and often with program and technical officials to ensure appropriate directives are included in affected Site/Facility Management Contracts;
- ✓ Support the timely resolution of exemption requests by assisting program officials in analyzing impacts, obtaining concurrences, and integrating approved requests into contracts.

A Site/Facility Management Contract is a contract that tasks the contractor with responsibility for the stewardship of a DOE-owned Site/Facility, including the operation and/or maintenance of its buildings, infrastructure, and other assets. A Management and Operating Contract is a type of Site/Facility Management Contract that tasks the contractor with responsibility for managing and operating an ongoing, continuing DOE mission at the site/facility such as weapons production or the conduct of scientific research and development at a

Federally Funded Research and Development Center or other laboratory. An M&O contract is awarded pursuant to and consistent with FAR 17.601 and DEAR 970. In the absence of a continuing DOE mission, a contract for the environmental remediation and closure of a site/facility where the contractor maintains primary responsibility for site/facility stewardship is a Site/Facility Management Contract, but usually will not be structured as a Management and Operating Contract. Site/Facility Management Contracts contain the Laws, Regulations, and DOE Directives clause. Support service contracts, general consulting contracts, prime construction contracts, supply contracts, utility contracts, etc. are not Site/Facility Management Contracts and do not contain the Laws, regulations, and DOE Directives clause.

(When a directive includes requirements that the Department determines should apply to other than Site/Facility Management Contracts, the directive includes direction to the DOE Procurement Executive to develop and issue an appropriate contract clause through the regulatory process. Since other than Site/Facility Management Contracts are not directly affected by the directives system and do not include the Laws, Regulations and DOE Directives clause, the following discussion does not address them.)

For Site/Facilities Management Contracts the integration of the directive system and the acquisition system is accomplished through the clause at DEAR 970.5204-2, Laws, Regulations and DOE Directives and the language in the directives themselves. As stated earlier, the Laws, Regulations, and DOE Directives clause is included in Site/Facility Management Contracts. It requires the contractor to comply with the requirements of DOE directives that are identified in the contract's List of Applicable directives (List B). The clause also grants the contracting officer the unilateral right (if agreement can not be reached) to revise List B at any time. The

standard language in each directive specifies that any requirements that apply to a Site/Facility Management Contract are included in the directive's contractor requirements document.

(At the time of this writing there are a few older directives that do not conform to the directive system in that they do not have contractor requirements documents or clear direction on applicability. These directives are being brought up to date as they are renewed.)

As a result of several initiatives, the Department has developed standard language that will be used in all new directives if and where the directives address Site/Facility Management Contracts. Most of this standard language has been appearing in new directives issued since 2001, since starting at that time directive drafters have been directed to use a template created by the Office of Procurement and Assistance Management. The standard language addresses applicability (to both Site/Facility Management Contracts and other than Site/Facility Management Contracts), subcontract flow-down, responsibilities of Federal officials for applying requirements to contractors, and the contractor requirements document. The template is now being formally incorporated into the DOE directives system by a revision to the directive on directives, DOE Order 251.1, "Directive System." The current version of the template is attached (titled "Contractor Applicability Template), and as you can see it addresses several topics. It requires the directive drafter to delineate clearly which official will identify affected Site/Facility Management Contracts. It then requires that official to notify the contracting officer who then becomes responsible for modifying the contracts through the Laws, Regulations, and DOE Directives clause. The template also provides detailed guidance on subcontracts. The two main points are to remind the contractor (in the contractor requirements document) not to flow-down

requirements unnecessarily and to remind the directive drafter to leave the implementation of the contractor requirements document at the subcontract level to the contractor in most cases.

If a DOE activity believes an otherwise applicable directive should not apply to an identified Site/Facility Management Contract or the directive requirements should be modified to match unique circumstances in the contract, the activity can follow the directive system's procedure for requesting an exemption to directive requirements. The procedure is explained in DOE Manual 251.1-1A, "Directive System Manual." As of the publication date of this guide chapter, the exemption process is being revised, but no changes to the basic rationale for requesting an exemption or to the requirement to include the headquarters office responsible for the directive in the exemption process are being contemplated. The revised exemption process focuses on easing the difficulty of removing inappropriate, overly burdensome, or unduly restrictive processes on contractors. It calls for the early participation of the responsible headquarters office, emphasizes collaborative effort (by the contractor, DOE field activity, and headquarters office), and explicitly describes the appropriate method to resolve disagreements at the appropriate level within the Department.

Contracting Officer Responsibilities

Contracting officers are responsible for incorporating directives into Site/Facility

Management Contracts consistent with each specific DOE directive providing a contractor requirements document and applicability provisions and in accordance with the Laws, Regulations, and DOE Directives clause. They also have the equally important responsibility of assisting program and other interested officials in carrying out their responsibilities under the DOE directive system. In composing RFPs, new contracts, contract extensions, contract modifications, and similar contractual actions, contracting officers must communicate early, clearly, and often with their customer offices (program offices and technical offices, such as security or environment, safety, and health, etc.) regarding which directives those offices have determined must apply to the contractual action. The end product of these interactions must be an unambiguous compilation of all affected offices' decisions on which DOE directives to include in the contractual document. Contracting officers must also contribute to the processing of any exemption requests by, among other things, helping the affected officials analyze the impact of contemplated exemptions, ensuring the appropriate offices concur, and integrating any approved exemptions into the contractual action's construct in a prudent manner. Finally, during the term of each contract contracting officers should maintain communications with their program and technical offices to ensure that their decisions on the applicability of changes to directives (for example, as new directives are issued, old ones cancelled, or current ones revised) are reflected in the contract in a timely manner.

CONTRACTOR APPLICABILITY TEMPLATE

If the requirements of a Directive are intended to be made applicable to contractors, the following language must be added to the appropriate paragraphs of the directive. (Note: The following paragraphs are numbered and/or formatted as they typically would be in a directive.)

3. APPLICABILITY.

b. Site/Facility Management Contracts.

- (1) The Contractor Requirements Document (CRD), Attachment X, sets forth requirements of this Order that will apply to site/facility management contracts that include the CRD.

- (2) This CRD must be included in site/facility management contracts that

[Here the office of primary interest (OPI) must fill in the criteria that identify to which site/facility management contracts the OPI intends the order to apply. If the OPI intends the CRD to apply to only certain types of work within a contract, the OPI must describe that work here. Here also the OPI must articulate what authority is granted to an official identified in the responsibilities paragraph to modify the CRD.]

- (3) This Order does not apply to other than site/facility management contracts. Any application of any requirements of this Order to other than site/facility management contracts will be communicated separately from this Order.

[In the responsibilities section of the directive, the OPI may task the Department of Energy procurement executive to work with the OPI to develop, publish for public comment, and incorporate into the DOE acquisition regulation any required contract clause and clause prescription that should be inserted in other than site/facility management contracts.]

- (4) The office identified in the Responsibilities paragraph is responsible for notifying the contracting officer of which site/facility management contracts are affected. Once notified, the contracting officer is responsible for incorporating the CRD into each affected site/facility management contract via the laws, regulations, and DOE directives clause of the contract.

- (5) As the laws, regulations, and DOE directives clause of a site/facility management contract states, regardless of the performer of the work, the site/facility management contractor with the CRD incorporated into its contract is responsible for compliance with the requirements of the CRD. An affected site/facility management contractor is responsible for flowing down the requirements of this CRD to subcontracts at any tier to the extent necessary to ensure the site/facility management contractor's compliance with the requirements. In doing so, the contractor shall not unnecessarily or imprudently flow down requirements to subcontracts. That is, the contractor shall both (1) ensure that it and its subcontractors comply with the requirements of this CRD and (2) only incur costs that would be incurred by a prudent person in the conduct of competitive business.

[Generally, implementation of CRD requirements should be left to the site/facility management contractor. If the OPI determines it necessary to address flow down of requirements, it should do so in the CRD. The OPI should not require flow down unless it is necessary to ensure that the purpose of the order is achieved.]

5. RESPONSIBILITIES.

[In this paragraph, the OPI must identify an office as responsible for ensuring the CRD is incorporated into each affected site/facility management contract, task that office with telling the contracting officer of each affected site/facility management contract, and articulate what authority is granted to the identified office to modify the CRD. If the OPI has indicated that the CRD is to apply to only certain types of work within a contract, the OPI must task the identified office with telling the contracting officer which work is affected.]

Also in this paragraph, the OPI must task the contracting officer, after he or she has been notified, with incorporating the CRD into the affected site/facility management contract via the laws, regulations, and DOE directives clause of the contract.

If it is appropriate, the OPI may task the DOE procurement executive to work with the OPI to develop, publish for public comment, and incorporate into the DOE acquisition regulation any required contract clause and clause prescription that should be inserted in other than site/facility management contracts.]

CONTRACTOR REQUIREMENTS DOCUMENT

The following paragraph must be added to the CRD, usually in the opening paragraphs.

Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this CRD. The contractor is responsible for flowing down the requirements of this CRD to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements. In doing so, the contractor shall not unnecessarily or imprudently flow down requirements to subcontracts. That is, the contractor shall (1) ensure that it and its subcontractors comply with the requirements of this CRD and (2) only incur costs that would be incurred by a prudent person in the conduct of competitive business.

[Generally, implementation of CRD requirements should be left to the site/facility management contractor. If the OPI determines it necessary to address flow down of requirements, it should do so in the CRD. The OPI should not require flow down unless it is necessary to ensure that the purpose of the order is achieved.]

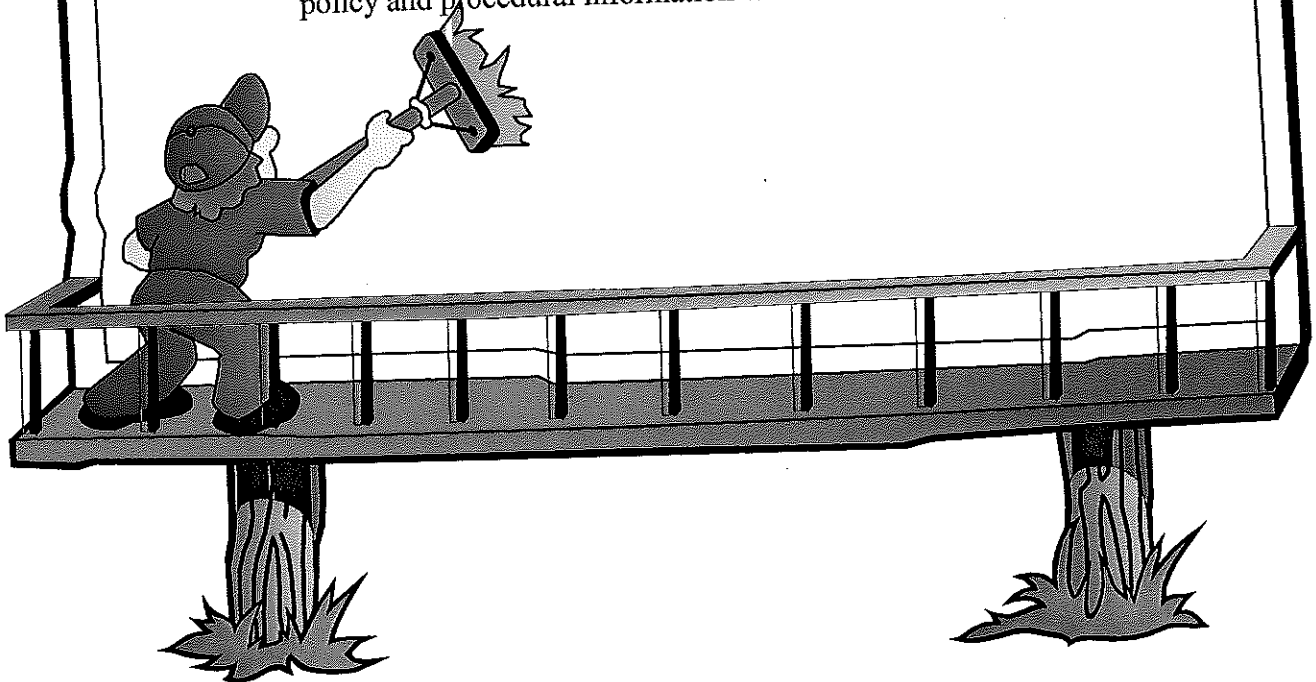
The contractor must . . .



Headquarters Policy Flash

FLASH 2003-27

DATE: October 3, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management
SUBJECT: **Central Contractor Registration (CCR) Effective October 1, 2003**
CONTRACTOR REGISTRATION/PAYMENT ALERT
and Federal Procurement Data System-Next Generation (FPDS-NG)
Notification
SUMMARY: In concert with previous announcements, FLASH 2003-05 and 2003-12, Central Contractor Registration (CCR) is implemented as a final rule published in the Federal Register at 68 FR 56669. Contracting personnel should review the details of this final rulemaking in full text. Additional policy and procedural information will be forthcoming.



FLASH 2003-27
October 3, 2003

I. Central Contractor Registration (CCR)

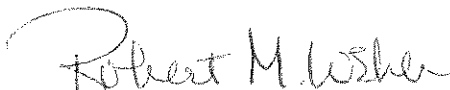
Immediate Considerations-

- 1) Contracting personnel are advised that when awarding contracts on or after October 1, 2003 the following FAR clause(s) should be incorporated, as applicable-
 - 52.204-6 Data Universal Numbering System (DUNS),
 - 52.204-7 Central Contractor Registration
 - 52.212-1 Instructions to Offerors-Commercial Items
 - 52.212-4 Contract Terms and Conditions-Commercial Items
 - 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items
 - 52.213-4 Terms and Conditions - Simplified (Other Than Commercial Items)
 - 52.232-33 Payment by Electronic Funds Transfer-Central Contractor Registration
- 2) While we are in the process of CCR implementation, contracting personnel, prior to making an award, should contact their finance office to ensure that payment can be made to the contractor.

II. Federal Procurement Data System-Next Generation (FPDS-NG)

The Federal Government is converting from FPDS to FPDS-NG in the near future, which will affect the reporting of award information among other things. Pending implementation of the new FPDS-NG and to ensure that DOE obtains appropriate credit in the existing FPDS system, all FY 2003 actions should be reported to PADS no later than **October 17, 2003**.

Questions concerning this Flash should be directed to Denise P. Wright on (202) 586-6217 or via e-mail at Denise.Wright@hq.doe.gov or Doug Baptist on (202) 586-0813 or via e-mail at Douglas.Baptist@pr.doe.gov



Robert M. Webb, Acting Director
Office of Procurement and
Assistance Policy

cc:
PPAG Members
FAAC Members



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-28

DATE: October 08, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: "Chapter 16 – General Guide to Contract Types for Requirement Officials"

SUMMARY: This Chapter has been added to provide additional guidance regarding contract types to that provided in Federal Acquisition Regulations (FAR) Part 16 and DEAR 916. This guide does not supercede information contained in the FAR, but instead enhances it.

POLICY FLASH

2003-28

A procurement contract, rather than forms of financial assistance, is the statutorily directed means for Federal agencies to acquire goods and services for their own use. A wide selection of contract types are available to allow DOE to design the most appropriate contract instrument for the acquisition of the large variety of goods and services for which DOE contracts. No single contract type is right for every contracting situation. The type of contract must consider the programmatic, performance, and financial factors present in the individual requirement in order to best achieve the intended result.

While the Contracting Officer is ultimately responsible for selection of the appropriate contract type, the requirement initiator can provide insight into factors that are critical to its determination.

The attached Acquisition Guide Chapter has been designed principally to provide useful information on the types and selection of appropriate contract types to the requirement initiator. However, it is also intended as a resource for contracting professionals.

Questions concerning this Acquisition Guide Chapter should be addressed to Richard Leotta at (202) 586-9073 or via e-mail at Richard.leotta@hq.doe.gov



Robert M. Webb
Acting Director
Office of Procurement and
Assistance Policy, OMBE

Attachment



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-29

DATE: October 28, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Financial Assistance Letter Number 2003-03R – “Implementation of
OMB Grant Management Policies”

SUMMARY: This Policy Flash distributes a revised Financial Assistance Letter (FAL)
No. 2003-03R – “Implementation of OMB Grant Management Policies.”



POLICY FLASH

2003-29

FAL 2003-03 has been changed to:


- Extend the implementation date for the standard format for announcements of funding opportunities (i.e., DOE announcement template) to November 23, 2003. The DOE announcement template will be on the IIPS web site November 3, 2003 for your use.
- Revise the first bullet under Section III. A to comport with the final OMB policy regarding Grants.gov FIND (68 FR 58146, published October 8, 2003) to read as follows (changed language is underlined):

“Announcements of funding opportunities for awards less than \$25,000 for which 100 percent of eligible applicants live outside of the United States.”

- Make changes to the announcement template (see highlighted and deleted sections on the attached template). The major changes to the template are:
 - Revised title and moved “Project Summary/Abstract” to IV.2.D.iii to conform with the IIPS file attachments. Revised language to reflect this change.
 - Revised title and moved “Certifications/Assurances/Representations to IV.2.D.v. to conform with IIPS file attachments. Revised language to identify two sets of certifications/assurances/representations.
 - Deleted “EPACT Representation” from the table at IV.3.C. The EPACT representation is included in one of the certification/assurances/representations form sets.
 - Revised VIII. 7. “Intellectual Property Developed under this Program” to indicate that the new Intellectual Property Provisions are available on the GC web site.
 - Made other minor changes.

If you have questions regarding this FAL, contact Trudy Wood at 202 586-5625 or by e-mail at trudy.wood@hq.doe.gov.

Attachment


Robert M. Webb
Acting Director
Office of Procurement and
Assistance Policy, OMBE

FOCI Requirement Matrix

BUSINESS STRUCTURE		Sole Proprietorship*	Privately Owned Corporation**	Publicly Traded Corporation**	Partnership** 1. General 2. Limited	Limited Liability Company**	College/University**
S I T E I N F O R M A T I O N		- SF 328 w/ Instructions (Questionnaire). Affirmative answers are explained on a separate attachment. Form must be signed, dated and certified by the proprietor.	- SF 328 w/ Instructions (Questionnaire). Affirmative answers are explained on a separate attachment. Form must be signed, dated and certified by an authorized representative of the corporation.	- SF 328 w/ Instructions (Questionnaire). Affirmative answers are explained on a separate attachment. Form must be signed, dated and certified by an authorized representative of the corporation.	- SF 328 w/ Instructions (Questionnaire). Affirmative answers are explained on a separate attachment. Form must be signed, dated and certified by an authorized representative of the partnership.	- SF 328 w/ Instructions (Questionnaire). Affirmative answers are explained on a separate attachment. Form must be signed, dated and certified by an authorized representative of the company.	- SF 328 w/ Instructions (Questionnaire). Affirmative answers are explained on a separate attachment. Form must be signed, dated, and certified by an authorized representative of the institution.
		- Summary FOCI Data Sheet.	- Summary FOCI Data Sheet.	- Summary FOCI Data Sheet.	- Summary FOCI Data Sheet.	- Summary FOCI Data Sheet.	- Summary FOCI Data Sheet.
		- Representative of Foreign Interest Statement (If applicable).	- Representative of Foreign Interest Statement (If applicable).	- Representative of Foreign Interest Statement (If applicable).	- Representative of Foreign Interest Statement (If applicable).	- Representative of Foreign Interest Statement (If applicable).	- Representative of Foreign Interest Statement (If applicable).
		- List of Owners, Officers, Directors & Executives, (OODEP Form).	- List of Owners, Officers, Directors & Executives, (OODEP Form).	- List of Owners, Officers, Directors & Executives, (OODEP Form).	- List of Owners, Officers, Directors & Executives, (OODEP Form).	- List of Owners, Officers, Directors & Executives, (OODEP Form).	- List of Owners, Officers, Directors & Executives, (OODEP Form).
O R G A N I Z A T I O N A L		- In community property states, (AZ, CA, ID, LA, NV, NM, TX, WA, WI), spousal information is also required on the OODEP Form. If single, so indicate.	- Stock Ownership Form (Share Holders= Form). If there is a Shareholders Agreement, a copy must be provided.	- Most recent Proxy Statement for the annual meeting of stockholders. - Most recent copies of Schedules 13D and/or 13G received from any beneficial owners (foreign or domestic) who hold 5% or more of the US organization securities.	- Stock Ownership Form (Share Holders= Form). Only if any part of the partnership has public stock. - If publicly traded: Most recent copies of Schedules 13D and/or 13G received on any beneficial (foreign or domestic) who hold 5% or more of the US organization securities. - If publicly traded: Most recent Proxy Statement for the annual meeting of stockholders.	Authorizing resolutions for the board of directors spelling out their specific responsibilities.	Authorizing resolutions for the OODEPs spelling out their specific responsibilities.
		- State Registration Certificate (e.g., Certificate of Fictitious Business Name)/Tax ID Number.	- Articles of Incorporation (with all amendments).	- Articles of Incorporation (with all amendments).	1. General B Similar to a Sole Proprietorship, and may only be able to provide a certificate of fictitious business name. 2. Limited B Must submit Certificate of Limited Partnership filed with the state.	- Certificate of Organization.	- University Charter (Similar to Articles of Incorporation).
G O V E R N A N C E			- By-laws (attested copy with all amendments).	- By-laws (attested copy with all amendments).	- Partnership Agreement.	- Operating Agreement.	- Charter or similar documents to company's by-laws.

FOCI Requirement Matrix

F I N A N C E I A T L S	<p>- Latest Financial Report, or a copy of the 1040 for the previous year (including Schedule C).</p> <p>The most recent IRS tax return may ONLY be submitted if the tax return includes the information required to be included on a balance sheet and income statement and the tax return is a copy of the entire return.</p>	<p>- Latest consolidated Annual Report or Audited financial information, including notes for the most recently closed accounting year. (If audited report is not available, entity must certify to the unavailability of audited information).</p> <p>- If company stock is not publicly traded, but the company has publicly-traded debt, submit Form 10-K filed with SEC.</p>	<p>- Latest Annual Report to the Shareholders for the most recently-closed accounting year.</p> <p>Any Form 10-Qs for financial quarters filed since last annual report.</p>	<p>- If publicly traded, submit latest annual report to the shareholders. Also any Form 10-Qs for financial quarters since the last annual financial report.</p> <p>- Not publicly traded Latest consolidated Annual Report or Audited Financial Information, including notes, for the most recently closed accounting year. (If audit report is not available, entity must certify to the unavailability of audited information).</p>	<p>- Latest Annual Report or Audited Financial Information, including notes, for the most recently closed accounting year. (If audit report not available, the entity must certify to the unavailability of audited information).</p>	<p>- Latest Report or Audited Financial Information, including notes, for the organization=s most recently closed accounting year. (If audit report not available, the entity must certify to the unavailability of audited information).</p>
		<p>- Most recent Annual Stockholders and Board meeting minutes identifying directors and officers of the Corporation and company=s voting list. This should include the authorizing resolutions of the board of directors which spell out the authorities of the OODEPs.</p>	<p>Authorizing resolutions for the board of directors that spell out the authorities of the OODEPs.</p>	<p>If required by partnership agreement: The most recent Annual Stockholders and Board meeting minutes identifying directors and officers and company=s voting list.</p>		<p>- Most recent Annual Board meeting minutes identifying directors and officers of the entity, and entity=s voting list.</p>

NOTES: * FOCI determination is not required of self-employed individuals performing work under a consulting agreement. (DOE O 470.1, IV, 2a).

** If applicable, each tier parent of the bidder must submit a complete package (i.e., information shown above for the applicable form of the business)



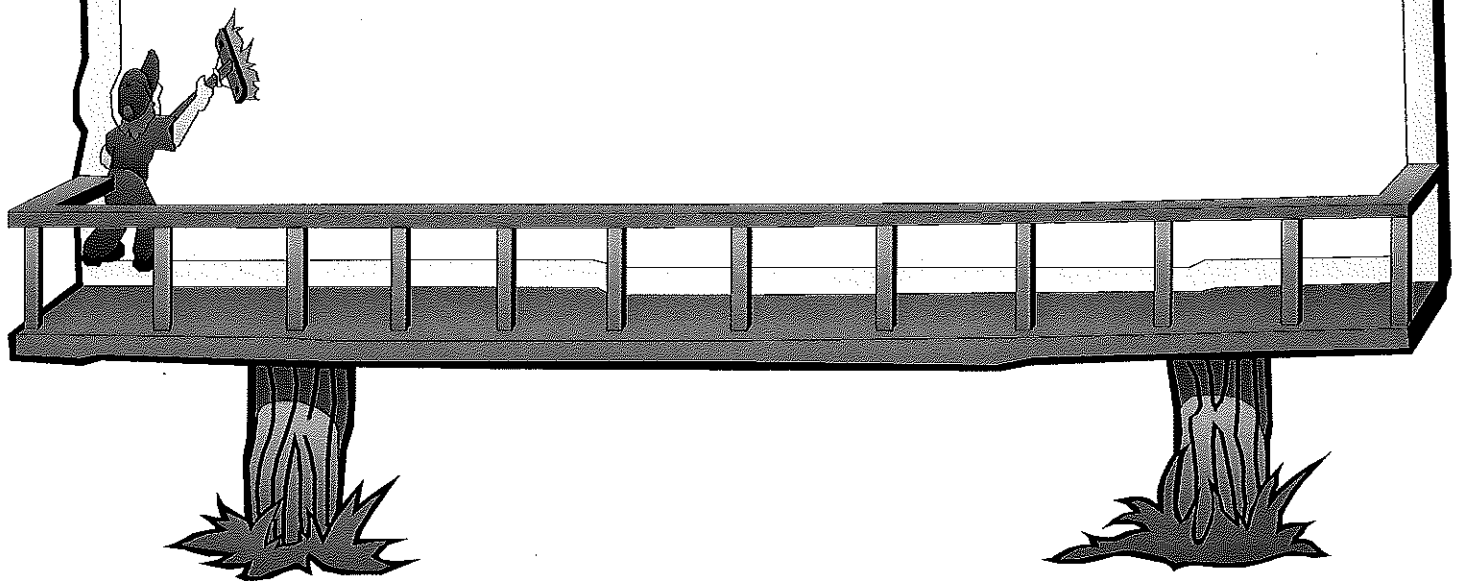
HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-30

DATE: November 25, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Availability of Financial Assistance Announcement Template and Tips for Navigating the Document**

SUMMARY: This Policy Flash provides tips on using the new DOE-wide financial assistance announcement template.



POLICY FLASH

2003-30

Financial Assistance Letter 2003-03R introduced a new announcement format for all discretionary competitive financial assistance funding opportunities. The new format is based on a policy letter issued by the Office of Management and Budget and provides a standardized format for all federal grant making agencies. A template has been developed for use by DOE personnel to simplify the creation of the announcement.

A WORD® version of the new DOE-wide announcement template is currently available at [http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/FinancialAssistanceTemplate/\\$File/FinancialAssistanceTemplate.doc](http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/FinancialAssistanceTemplate/$File/FinancialAssistanceTemplate.doc) (See FAL 2003-03R for guidance on its use). The WORD® document is partially protected to ensure standardized formatting. Each section generally includes choices of standardized text and a blank text block. Contracting Officers/Program Officials may select the appropriate standardized text or complete the text block to provide specific information for the announcement or more accurately define the terms of the competition.

The template can be navigated using these quick tips:

- Use the template, not a previously completed announcement, by saving the template from the web page. (The current version is dated 11/14/2003.) After saving the template, open it in WORD®; when prompted, select read-only and then enable macros. Each time the announcement is saved, a new file name is required. A sequential system of 1-2-3 or a-b-c is recommended.
- Directions for completing each section of the template can be accessed by enabling the hidden text. In WORD® 2002, hidden text is enabled on the Tools menu under Options, View, Formatting Marks.
- Help is generally available by pressing <F1> when in a text block.
- The <Tab> key will jump between fill-in blocks and check blocks. In the tables and unprotected sections, such as Section IV.2.D-Application, pressing the <Tab> key will not move the cursor to the next block; instead a normal tab will be inserted.
- Fill-in boxes are grayed out; click in the box to insert text.
- Some fill-in boxes have drop down menus which will activate by clicking in or tabbing to the box. For example, drop down menus are available to choose between DOE and NNSA.
- Clicking in the boxes in front of each block of standardized text will select that paragraph(s). A second click will unselect the box.
- When entering dollars in Section II Award Information, there is no need to enter zeroes or dollar signs as the block will format the numbers.

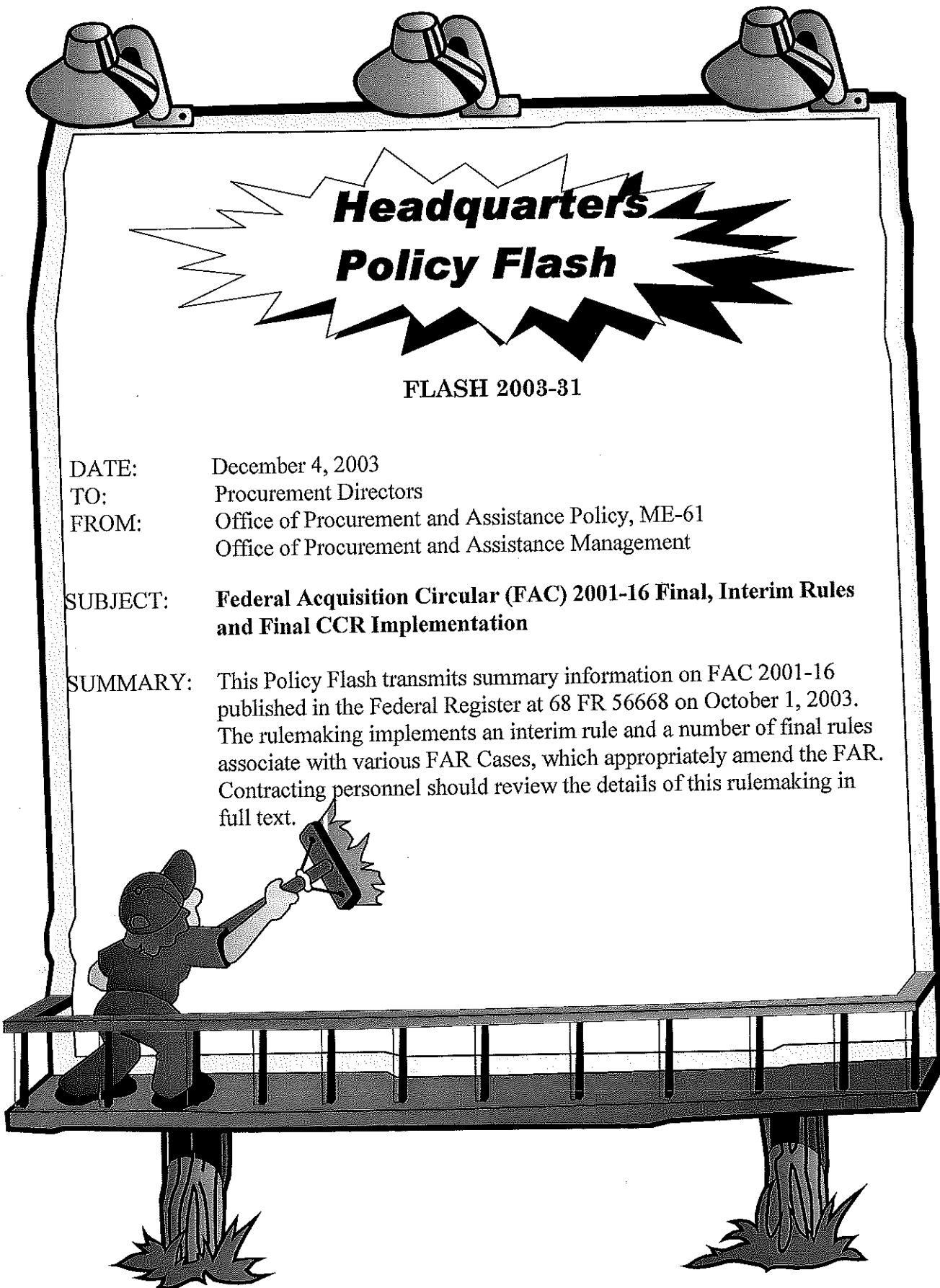
- Be careful when entering the percentage cost share in Section III.2, the block formats to the percent from a decimal, e.g., if you enter 20 you get 2000%.
- The fill-in boxes for dates will format whatever is entered, including numbers. The formatting default is MONTH ##, ####, with a default to the first day of the month if no date is entered and if no year is entered, the date becomes the year and a 1 is used for the date. Note: all date text blocks are designed with automatic formatting except for Section V.3-Anticipated Announcement and Award Dates, which is a plain text box to allow for month/year dates only.
- Holding the <CTRL> key plus clicking on the blue underlined links, such as URLs or section numbers moves the cursor to the referenced section or web page. This will also allow you to jump from the Table of Contents to the applicable section.
- Boxes that have been checked denote required information and you must complete the fill-in information, if applicable.
- The text in Section IV.2.D Application is unprotected. All text not applicable to the announcement may be deleted.

A new forms web page was created to provide potential applicants with one location to find the forms, or links to the forms, needed to respond to a financial assistance opportunity announcement. The web page can be accessed directly at <http://professionals.pr.doe.gov/ma5/ma-5web.nsf/FinancialAssistance/IPSFAForms?OpenDocument>, through a link on the Financial Assistance Opportunity page or through the Information page on the DOE E-center.

If you have technical questions on the template or on the forms page, please contact Mara Grissom at 202-586-9729 or by e-mail at mara.grissom@hq.doe.gov. Questions on template content or on FAL 2003-03R should be directed to Jackie Kniskern at 202-586-8189 or by e-mail at Jacqueline.kniskern@hq.doe.gov or Trudy Wood at 202-586-5625 or by e-mail at trudy.wood@hq.doe.gov.



Douglas L. Baptist
Acting Director
Office of Procurement and
Assistance Policy, OMBE



Headquarters Policy Flash

FLASH 2003-31

DATE: December 4, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular (FAC) 2001-16 Final, Interim Rules and Final CCR Implementation**

SUMMARY: This Policy Flash transmits summary information on FAC 2001-16 published in the Federal Register at 68 FR 56668 on October 1, 2003. The rulemaking implements an interim rule and a number of final rules associate with various FAR Cases, which appropriately amend the FAR. Contracting personnel should review the details of this rulemaking in full text.

FLASH 2003-31
December 4, 2003

Federal Acquisition Circular (FAC) 2001-16

The following nine items are in FAC 2003-16, which was published in the Federal Register on October 1, 2003, at 68 FR 56668. Items 1, 2, 3, 4, and 9 were effective October 1, 2003, and items 5, 6, 7, and 8 are effective October 31, 2003. The FAC is available via the internet at <http://www.arnet.gov/far/facsframe.html>

Effective Date: October 1, 2003 (Items 1, 2, 3, and 4)

Applicability Date: This final rule applies to contracts, basic agreements, basic ordering agreements, blanket purchase agreements, or modifications awarded on or after October 1, 2003. Existing contracts, basic agreements, basic ordering agreements, or blanket purchase agreements with a period of performance beyond December 31, 2003, are also covered by this final rule and must be modified pursuant to FAR 4.1103.

1. Central Contractor Registration (FAR Case 2002-018)

This final rule amends FAR parts 1, Federal Acquisition Regulation System, 2, Definition of Words and Terms, 4, Administrative Matters, 13, Simplified Acquisition Procedures, 32, Contract Financing and 52, Solicitation and Contract Clauses. This rule-

- Requires contractors to register in the Central Contractor Registration (CCR) database prior to the award of any contract, basic agreement, basic ordering agreement, blanket purchase agreement on or after October 1, 2003 (See Policy Flashes 2003-05, 2003-12, and 2003-27); and
- Directs contracting officers to modify existing contracts whose period of performance extends beyond December 31, 2003;
- Requires those contractors to register in the CCR database by December 31, 2003.

Note: DOE contractor registration in the CCR is not optional; the CCR data are not narrowly intended for use relating to a specific business process, such as contractor payment. As discussed in previous Policy Flashes, the CCR is a centrally located searchable database developed to maintain and provide sources for future procurements, identify possible subcontracting opportunities, and among other things, provide an electronic linkage to financial management processes. The CCR data is the most up to date and complete data available from a single validated source on contractors doing business with the Government. CCR transmits and validates data utilizing a number of other acquisition related systems, FPDS-NG,

FLASH 2003-31
December 4, 2003

On-line Representations and Certifications, eSubcontracting, Reporting System, etc., which effect DOE reporting, recordkeeping and other compliance requirements. These transactions, and others, cause CCR registration to serve as a genesis for Governmentwide electronic acquisition business processes, which effect contractor and government operations.

Guidance:

- 1) All DOE contracting personnel are required to comply with FAR provisions and clauses regarding Central Contractor Registration (CCR) as provided in the Federal Acquisition Circular 2001-16, except-
 - When DEAR 970.32, Contract Financing, provisions and clauses are applicable to the type of procurement considered for use, the payment clause prescribed in FAR 32.1110 should not be inserted in the solicitation or contract.
 - When DEAR 970.32 provisions and clauses are determined applicable to a particular procurement, FAR 52.204-7, Central Contractor Registration, shall continue to be utilized in conjunction other DEAR provisions and clauses.

Notwithstanding, Part 4, Administrative Matters, is applicable in all procurements unless otherwise identified in regulation. Consistent with DEAR 970.5200, the provision and clauses contained in DEAR 970 supplement the provisions and clauses prescribed in the FAR and in other parts of the DEAR (48CFR 901 through 48 CFR 952), and, pursuant to the individual provision or clause prescription, are to be used in addition to, or in place of, such clauses.

- 2) When modifying existing contracts a unilateral modification shall be issued. The contractor is required to enter its "DUNS" or "DUNS + 4" on the SF-30, Amendment of Solicitation/Modification of Contract, and return a copy of the SF-30 (See 52.204-7, Alt. I).

2. Electronic Commerce in Federal Procurement (FAR Case 1997-304)

This rule-

- finalizes the interim rule that designated Federal Business Opportunities (FedBizOpps) as the Governmentwide Point of Entry (GPE);
- Makes the GPE the exclusive official source for public access to notices of procurement actions over \$25,000;

FLASH 2003-31
December 4, 2003

- Eliminates the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) computer architecture;
- Allows solicitation notices to be published solely using the single designated GPE which may be accessed via the internet at <http://www.fedbizopps.gov> ;
- Requires electronic access to notices of solicitation through the single GPE as a replacement for paper (or electronic) publication in the CBD.

3. Unique Contract and Order Identifier Numbers (FAR Case 2002-025)

This interim rule amends the FAR to require each reporting agency to assign a unique procurement instrument identifier (PIID) for every-

- Contract;
- Purchase Order;
- Basic Ordering Agreement;
- Basic Agreement; and
- Blanket Purchase Agreement reported to the Federal Procurement Data System (FPDS).

In addition, have in place, no later than October 1, 2003 when the next generation of FPDS becomes operational, a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award.

4. Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack, and Temporary Emergency Procurement Authority (FAR Cases 2002-026 and 2002-003)

This rule finalizes two interim rules implementing FAR Cases 2002-026 and 2002-003, which increases the amount of the micro-purchase threshold and the simplified acquisition threshold and expands access to streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack (See Policy Flash 2002-30).

Also, included in this final rule is an amendment to the FAR adding a technique for conducting market research by querying commercial databases that provide information relevant to the an agency acquisition.

FLASH 2003-31
December 4, 2003

Effective Date: October 31, 2003(Items 5, 6, 7 and 8)

5. Notification of Overpayment Contract Financing Payments (FAR Case 2001-005)

The final rule amends FAR Part 12, Acquisition of Commercial items, Part 32 Contract Financing, and Part 52, Solicitation Provisions and Contract Clauses to require the contractor to notify the contracting officer if the Government overpays when making an invoice payment or a contract financing payment under either a commercial item or a noncommercial item contract.

6. Caribbean Basin Country-Dominican Republic (FAR Case 2003-006)

This final rule amends FAR Part 25 Foreign Acquisition, and Part 52 Solicitation Provisions and Contract Clauses to reinstate the treatment of the products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act, as directed by the U.S. Trade Representative.

7. Prohibited Sources (FAR 2001-015)

The final rule removes Serbia, the Taliban-controlled regions of Afghanistan, and Iraq from the list of prohibited sources and directs the contracting officer to lists of entities and individuals subject to economic sanctions. The lists are available at <http://www.epls.gov/TerList1.html> . This rule amends the FAR to implement recent Executive orders and to reflect the regulations of the Department of the Treasury's Office of Foreign Assets Control.

8. Economic Planning, Employee Morale, and Travel Costs Principles (FAR Case 2002-001)

This final rule amends the FAR to revise three cost principles: (1) FAR 31.205-12, Economic planning costs; (2) FAR 31.205-13, Employee morale, health, welfare, food service, and dormitory costs and credits; and (3) FAR 31.205-46, Travel costs. These changes restructure the paragraphs and remove unnecessary and duplicative language to increase clarity and readability.

FLASH 2003-31
December 4, 2003

9. Technical Amendments

This final rule amends the FAR to update references and make editorial changes at FAR 8.404(b)(6) and 24.202(a).

Please address your comments and any questions relating to this Flash, to Denise P. Wright on (202) 586-6217 or via e-mail at Denise.Wright@hq.doe.gov



Douglas L. Baptist, Acting Director
Office of Procurement and
Assistance Policy

Attachment
cc: PPAG Members



HEADQUARTERS POLICY FLASH

POLICY FLASH 2003-32

DATE: December 11, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Amendment of the Department of Energy Acquisition Regulation (DEAR) To
Revise Conditional Payment of Fee Clause**

SUMMARY: This Policy Flash summarizes the interim final rule published in the Federal Register on December 10, 2003, at 68 FR 68771, amending the DEAR to revise the current conditional payment of fee clause.

POLICY FLASH

2003-32

This interim final rule elaborates on the current policy dealing with reductions in fee and other payments to contractors due to their performance failures in carrying out contract obligations related to: (1) safeguarding classified information; and (2) protection of environment, health and safety, including the health and safety of workers at contract sites. It specifies various degrees of violations and the amount of the reduction attributable to each degree of violation. It replaces the current clause for management and operating contracts and adds three clauses for other than management and operating contracts.

The rule reflects requirements included in Section 3147 of the National Defense Authorization Act for Fiscal Year 2000 that added section 234B to the Atomic Energy Act (42 U.S.C. 2282b) related to violations of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The rule also reflects requirements included in section 3173 of the National Defense Authorization Act for Fiscal Year 2003 that added section 234C to the Atomic Energy Act (42 U.S.C. 2282c) related to contractors who have entered into an agreement of Price Anderson indemnification who violate any regulation promulgated to protect worker safety and health (WS&H).

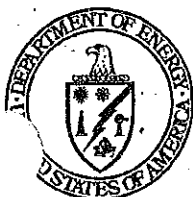
The Notice of Proposed Rulemaking (NPR) of February 1, 2001, contained proposed amendments to the DEAR that were consistent with the subsequently enacted requirements of section 234C. A few minor amendments to the NPR, however, were necessary to address specifically the new section 234C. Those amendments are the Interim Rule portion of this Interim Final Rule, and DOE is providing an opportunity for public comment limited to the minor amendments.

The Electronic DEAR on the Home Page will be updated to reflect this rule.

Please contact Michael Righi at (202) 586-8175 or at Michael.Righi@hq.doe.gov if you have questions.



Douglas L. Baptist
Acting Director
Office of Procurement and
Assistance Policy, OMBE



Department of Energy
Washington, DC 20585

MEMORANDUM FOR THE SECRETARY

THROUGH: KYLE MCCLARROW
DEPUTY SECRETARY

2003-014819

ROBERT G. CARD *[Signature]*
UNDER SECRETARY FOR ENERGY, SCIENCE
AND ENVIRONMENT

LINTON F. BROOKS *[Signature]*
UNDER SECRETARY FOR NUCLEAR SECURITY

FROM: *[Signature]*
JAMES T. CAMPBELL
ACTING DIRECTOR, OFFICE OF MANAGEMENT, BUDGET
AND EVALUATION/ACTING CHIEF FINANCIAL OFFICER

SUBJECT: ACTION: Approval to issue and publish an interim final rule to set forth policies for reducing fee or other amounts payable to contractors because of performance failures related to safeguarding classified information or to protecting environment, safety, and health.

BACKGROUND: This rulemaking responds to specific statutory directions in section 3147 of the National Defense Authorization Act for Fiscal Year 2000 and section 3173 of the National Defense Authorization Act for Fiscal Year 2003. The Acts require that the Department's contracts provide for reduction in fees or amounts paid if the contractor violates rules or regulations related to the safeguarding of classified information and the protection of worker safety and health (a subset of environment, safety, and health), respectively.

DISCUSSION: The Department's management and operating contracts currently contain a clause that provides for reductions in fee in the event the contractor fails to achieve minimum performance requirements in the area of environment, safety and health or in the case of a catastrophic event. This rulemaking will result in replacing the current contract clause with clauses that provide greater specificity in defining events that may trigger fee reductions, as well as expanding the scope of the clauses to address statutorily required fee reductions related to the safeguarding of classified information. The new clauses delineate: (1) what are potential fee reduction events; (2) how to gauge the severity of the events; and (3) how much fee can be lost.